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# Penal transformations: The case of the Chilean Juvenile Justice System

Daniela Rodriguez Gutierrez

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## **Abstract / Lay Summary**

This thesis explores the major transformation of the Chilean juvenile justice system that was implemented in 2007. However, this is a much longer process that involves analysing the inter-relationship between polity building, the transition from authoritarian to democratic rule after 17 years of authoritarian regime over the 1970s and 1980s and the legitimization of democracy in the 1990s.

Theoretical approaches to understanding the evolution of crime control and State punishment mechanisms usually refer to elements such as globalization (Newburn and Sparks, 2004), late modernity (Garland, 2001), or political economy (Dignan and Cavadino, 2007; Lacey, 2008). However, theory has also highlighted how the reform of justice systems forms part of broader processes of social transformation which, even though they involve an interaction with the wider world, are also dependent on their historical and local context (Melossi, Sozzo and Sparks, 2011). Nevertheless, most of what is known has been produced in developed, English-speaking democratic countries (or in relation to them) and rather less based on analysis of countries from the global south. The present work aims to reduce this gap.

Based on documentary analysis and interviews, this thesis demonstrates the key symbolic role of juvenile justice to legitimate the new democratic rule in times of transition; how the impact of the continuation of authoritarian practices, people and ideology into democratic polity building can shape crime control and State punishment; and how the temporal, historical and cultural conditions of a given context can alter the meaning of what we believe are globally understood concepts and processes.

In consequence, this research allows the understanding of a case that has not featured in the wider literature of penal transformation: a developing Latin-American country. It also offers the opportunity to analyse to what extent the existent research and theory of penal transformations can help to explain the drastic change in a context which is different to those where it is usually applied. In doing so, it contributes to the theoretical discussion of penal transformations with empirical research.



### **Declaration**

As per the Assessment Regulation (n 34) for Research Degrees at the University of Edinburgh, I confirm:

- (a) That this thesis has been composed by me;
- (b) That the work contained in this thesis is my own;
- (c) And that it has not been submitted for any other degree or professional qualification.

Daniela Rodríguez Gutiérrez

September, 2019

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## **Chapter 1: Introduction**

The principal aim of this thesis is to explore the major transformation which took place in Chilean juvenile justice as the country transitioned from dictatorship to democracy over the 1990s and 2000s. In doing so the thesis analyses the extent to which existing theories of penal transformations (mostly derived from studies of the global north) can help to explain the developments in Chile, while contributing to the theoretical discussion of penal transformations with empirical research.

As the thesis will show, the process of democratisation in Chile has, somewhat paradoxically, been accompanied by continuities in punitiveness. Indeed, despite the radical changes made to the institutional infrastructure of juvenile justice, the era of reform resulted in a system that was as punitive as the previous system that worked since 1928, over the 1970s and 1980s dictatorship and in the 1990s democratic order. Whilst Chilean developments do mirror aspects of the 'punitive turn' in juvenile justice that a number of theorists of penal transformation have identified in the global north over a similar time frame (see Bottoms, 1995; Goldson, 2002; Muncie, 2005; Goldson and Hughes, 2010; Chaney, 2015), the drivers and outcomes of juvenile justice reform in Chile owe much to the ways in which more localised social and cultural practices played out in the context of political transition, expansion and legitimisation of the new democratic order.

Based on interviews with a range of key players in the juvenile justice reform process at that time and on documentary analysis, the thesis will argue that the shifts in Chilean juvenile justice were the result of attempts by a new democracy to assert its authority to rule: that youth became the object of a reforming zeal as a way of distracting attention from the wider social and economic inequalities which continued to beset Chilean civil society; that the resulting juvenile justice system strongly relates to the continuity in the close networks of politicians who had predominated at the time of the dictatorship, and the continuity of authoritarian logic even during democratic times. The

thesis thus also highlights how there is no simple read off between constitutional infrastructure and the ethos and principles of governance: that clientelism and paternalism continued to shape the practice of juvenile justice and helped to shape the reforms which took place over the first decade of democracy and into the mid-2000s.

This opening chapter provides a context for the broader thesis, giving an overview and timeline of the key changes which occurred in Chile from dictatorship to democracy and a short history of juvenile justice. Chapter two of the thesis explores and critiques the wider literature on penal transformation. Chile has rarely featured in this literature but there is an important and growing body of work which has examined countries in transition as for example Cheliotis and Xenakis (2016) on Greece. Chapter three describes and discusses the methods used within the research, and the main empirical findings are set out in chapters four to six including an in-depth discussion of the drivers behind the reform and how they shaped the ethos and practice of the new system. The thesis concludes in chapter seven with a review of the empirical and theoretical implications of the findings.

### **The Chilean Juvenile Justice System**

The old juvenile justice system of the country was based in the Protection of Minors Act or Law of Minors published in 1928 (Law 4,447). This Act set the ethos, institutions and procedures to deal with young people in trouble with the law and in need of protection. It was then modified in 1967 (Law 16,618). Although the law 16,618 can be considered more an update than a reform, as it built over what existed, keeping most of the core elements (such as ethos, institutions and procedure) the same. The Acts of 1928 and 1967 set in place a tutelary system (to be described in the following subsection) that worked for over 70 years.

However, in the early 1990s, at the same time as Chile tried to solidify the democratic order that resulted in the transition from the dictatorship of the 1970s and 1980s, the national attention shifted towards juvenile justice and the need to perform radical changes at all levels. Laws associated with the legal situation of juveniles were modified from the beginning of the 1990s, starting with the ratification of the UN Convention on the Rights of the Child [UNCRC] in 1990, drafts for a new juvenile justice started being produced around 1996, the legislative discussion started in 2002, and the new Adolescents' Penal Responsibility Act [LRPA] that completely reformed the previous Acts was approved and published in 2005 and implemented in 2007. This new juvenile justice system which built on the responsabilization of juveniles, due process and the protection of the procedural guarantees; radically differed from the tutelary approach previously in place.

### 1. The tutelary system

The Law of Minors worked under a protection and educative model. The main purpose was the protection of children and young people. As a result, there was no formal punishment, no standardized procedure or guarantees, and no discussion about guilt (Sepúlveda, 2004; Pavez, 2005; De Ferrari, 2006; Couso, 2009; Langer and Lillo, 2014).

This law dealt with all under-16 years old in both protection and offending cases, making no distinction between them. However, juveniles between 16 and 18 years of age who presented offending behaviour had to go through a 'discernment test'. The purpose was to determine if they had the capacity to tell right from wrong, if they were aware of the implications of their actions. Therefore, all young people under 16 years of age were not criminally liable, and the situation of those between 16 and 18 years of age had to be clarified.

The discernment test was usually directed by a psychologist or a psychologist and a social worker and it did not have clear guidelines. Thus,

the strategies and methodologies used for the test varied between professionals and cases. The discernment report, usually made in the Centres for Observation and Diagnosis [Centros de Observación y Diagnóstico, COD], was then sent to the judge of minors. It was part of the duties of the Judge of Minors to determine, based on the case background, consideration of the report, the defendant (if there was one), and after talking to the young person, if they had 'discernment' or not. If they were found as not having 'discernment', they were dealt with by the Minors' Court with the rest of the children and young people. However, if they were declared to have 'discernment', they were sent to the criminal court where they followed the standard procedure for adult offenders. This implied an investigation, the determination of guilt and sentencing. The only difference was that, if found guilty, they would receive a sentence one degree lower than an adult would receive under the same circumstances (Protection of Minors Act, 1967).

Under the tutelary system, the possible measures could be to return the young person with those in charge of their care after an admonition; probation; the transference of the care of the juvenile to another person under supervision; or internment in a special centre for their education. All these measures were indeterminate in length, because even if the Judge of Minors had initially set a period of time, they could modify their decision at any moment (Sepúlveda, 2004). As a consequence, the whole process was the result of the judge's discretion (García-Méndez, 2001; Sepúlveda, 2004; Couso, 2006; De Ferrari, 2006).

Initially, the main institution in charge of young people in trouble after the Minors' Court had decided what would happen to them was the General Direction of Minors' Protections. This was a technical institution (as in mostly constituted by professionals with some level of expertise in the area to create technical guidelines) dependent on the Ministry of Justice in charge to provide professional diagnosis and the coordination of the Reformatories and Houses of Minors. The Houses of Minors worked with the General Direction of Minors Protection but could be private or run by NGOs. They acted as a care home and were in charge of educating children and young people when



the Judge of Minors decided that principal carers had to be stripped of that responsibility, which was then handled by the State (Bley, 2002). Therefore, the tutelary system was mostly about the State raising children and young people than anything else. Nowadays, Houses of Minors still exist but mostly for protection measures when the carers are considered dangerous. Usually, it is preferred that family members take this responsibility, and efforts are directed towards making Houses of Minors only as a last resort and short-term measure, whilst keeping children involved in the general community, for example going to a regular school.

In 1979, during the dictatorship of General Pinochet, the General Direction of Minors' Protection was replaced by a new institution. The National Service of Minors [Servicio Nacional de Menores, SENAME], which remains to this day. This is a centralised multi-disciplinary State institution dependent on the Ministry of Justice that worked under an approach of assistance, compensation and charity towards vulnerable youth (Zanzi, 1992b). It is also in charge of creating guidelines and providing subsidiary funding for the NGOs that carry the protection, adoption and juvenile justice programmes the State determines (SENAME, 2015). Only the youth centres for custodial sentences are directly controlled by SENAME with no participation of other public or private institutions, except from personnel from the national gendarmerie to guard the perimeter and internal emergencies (such as violent conflicts between juveniles). The names of these centres have changed over time and according to the legislation to fulfil different principles and priorities. Therefore, what in the past was known as Centres for Behaviour Rehabilitation [CERECO] are now known as Internment in Closed Centres with Social Rehabilitation Programmes [CRC].

During the period covered by the Law of Minors, the CERECOS were the place to intern juveniles when other measures were considered to have failed or the actions of the young person were considered too serious despite the lack of 'discernment'. These centres were supposed to provide rehabilitative programmes. However, the resources were never enough to actually generate programmes according to the need of this population (Morales,

2012). Thus, in practice, offenders were only kept isolated in controlled and closed environments.

Therefore, in practice, the tutelary system was a closed process that allowed the participation of few figures and left high discretionary powers in the figure of the Judge of Minors, which led to indefinite long term interventions and the excessive use of institutionalization as a protection measure. For example, in the early 1990s 50% of the young people in closed youth centres were under protection measures (Álvarez et al., 1993). In this same line, there was no recognition of an active role of the young person in their legal process, and the authority and duties of parents were erased to be assumed by the state (Sepúlveda, 2004; Pavez, 2005; De Ferrari, 2006; Couso, 2009; Langer and Lillo, 2014).

The result was a punitive system, as it confounded protection and punishment (Contreras, 2003). It was also discriminatory, because according to Cortés (2009), Judges of Minors tended to privilege children in 'irregular situation'. That means they tended to 'protect' the children of the poor. As a result, marginalised families were at greater risk of having their children taken away to be 're-educated' in institutions supported by the State (Aguirrezabal, Lagos and Vargas, 2009; Dionne and Zambrano, 2009). For example, almost all imprisoned young people in Latin America belong to lower socioeconomic strata and from marginalised sectors (Carranza, 2013). Finally, the Law of Minors was paternalistic as well, because young people were seen as objects of rights under the responsibility of the State (Sepúlveda, 2004; De Ferrari, 2006).

What is more, given the lack of effective rehabilitation programmes and the permanence of juveniles in crowded centres not specifically dedicated to their needs of protection or intervention, youth institutions were perceived as not stopping crime but making it worse by criminogenic contact and, contradictorily, leading to impunity as children were being placed under protection measures instead of punishment, fuelling complaints regarding the

ineffectiveness of the justice system (Cortés, 2009; Couso, 2009; Langer and Lillo, 2014).

Following from McAra (2010), the Tutelary System is more in line with what has been described as a welfarist approach, working under a more needs-oriented and child specific process (Goldson and Hughes, 2010). The difficulties of the system also reflect the main criticisms of welfarism, such as notions of being too soft, not promoting the responsibility of young people, overcontrolling, expanding an interventionist State, legitimating the target of non-offenders based on discriminatory ideas of 'troubling' behaviour, and authoritarian (Muncie and Hughes, 2002). In fact, García-Méndez (1998), an Argentinian expert in juvenile justice in the Latin American region, claimed tutelary systems worked very well with the authoritarianism that characterised Latin America between the 1960s and 1990s. This was because military regimes used their power to correct any sort of disruption under the image of doing the best for the country, bringing security and protection, erasing citizens' voices and leaving all decisions in a super powerful figure: the dictator. Hence, tutelarity and authoritarianism followed a similar logic.

However, after most of the dictatorships had ended in the 1990s, the general context of over controlling practices and a highly interventionist State changed. At the same time, the UNCRC was ratified by all Latin American countries, and it became part of their National Constitution around 1990 or 1991 (García-Méndez, 2000). Most countries in Latin America had juvenile justice systems that came from the 1920s and 1930s and all of them worked under a similar tutelary logic (Beloff, 2006), however, since 1990, starting with Brazil, there was a wave of juvenile justice reforms in the region. Of the 20 countries, 16 reformed their juvenile justice systems in the 1990s and 2000s under liberal democratic rules. According to García-Méndez (2004) no other region in the world developed such a strong social movement after the UNCRC came into play.

As I will explain in chapter four, during the authoritarian regime Chile faced extensive human rights violations, including torture, murder, illegal detentions

and the disappearance of people. This led to reports and pressure from the United Nations Organization and other international institutions and governments to change the situation. As a result, when the dictatorship ended it was in the midst of Human Rights discourses and promises of 'never again' (García-Méndez, 2000). Rights came to be understood as the basic element of what democracy meant (Cillero, 1998).

Following from this local reality, the regional phenomenon of juvenile justice reforms and after the country ratified international agreements, such as the UNCRC in 1990 and the American Convention on Human Rights (San José of Costa Rica Pact) in 1991, experts and institutions like UNICEF were quick to realise the new guidelines were not being respected by the tutelary system. For example, regarding due process or the minimum use of custody (Santibáñez and Alarcón, 2009), as the tutelary system did not follow a formal procedure, the presence of defendant lawyers was not needed, and the measures decided by the judge under their personal criteria did not have a set length. As a consequence, international suggestions for a reform started.

According to most interviewees and in the legislative debate of the new law, in Chile, similarly to what was happening in the rest of the Latin American region, it was the UNCRC that started the reform process. Before that there was no debate on the matter. Later chapters will question if the reform was indeed the result of the UNCRC and regional pressure. Nevertheless, the next section will follow from that starting point in 1990 to describe the key moments and events that marked the reform process to be analysed in chapters five and six.

## 2. Timeline of the reform

From 1967 until the implementation of the current juvenile justice system there were few changes to the legislation that dealt with young people who

presented offending behaviour. However, after the ratification of the UN Convention on the Rights of the Child and the American Convention on Human Rights in the early 1990s together with the return to democracy, the Ministry of Justice created a commission to study what was needed in order to follow the agreements (Cillero, 2006; De Ferrari, 2006). However, it did not reach conclusions strong enough to promote reform.

Nevertheless, children's rights took a predominant role in political and expert discourse in the early 1990s, to be addressed in more depth in chapter five. This gave more strength to the voices opposed to the logic and failures of the tutelary system demanding reform. At the same time, there was direct international pressure on the matter. For example, in 1994 the Committee of the UN made clear their concern regarding the slow progression in terms of a juvenile justice reform in Chile (De Ferrari, 2006).

At the same time, a series of other institutional changes took place. Amongst the key elements that altered the legal situation of young people and paved the way for the reform, we can find the creation of the National Council to Control Drugs [Consejo Nacional para el Control de Estupefacientes, CONACE] and the increase of resources and staff in Carabineros de Chile (the armed police) (Law 19,006) in 1990. In 1993 the law 19,221 established the age of legal adulthood at 18 years of age. In 1994, the law 19,343 forbade young offenders and adults to serve their sentences together. This measure had the intention of removing young people from prisons, creating centres solely for them. This was particularly relevant, as in 1993-1994 there were over 4,000 children and adolescents in adult prisons, 31% of them were between seven and 15 years of age (SENAME, 1995).

Parallel to these developments, in the second democratic government after the dictatorship, with President Frei (1994-2000), the Minister of Justice of the time (Soledad Alvear) called an expert commission to diagnose the juvenile justice national legislation. They worked together with UNICEF, and it resulted in a guideline to write the project of a new law (De Ferrari, 2006). In 1995 some experts were contacted to build the first draft of the project as

an urgent request of the Minister of Justice, with the aim of submitting it that same year. The project was written and delivered, but it led to further development of drafts instead of legislative discussion (Duce, 2003).

By 1998, eight drafts of a new juvenile justice law had been produced. The last one was published and presented to the international community and broadly discussed (De Ferrari, 2006). The drafts were always described and understood as following the UN Convention on the Rights of the Child, ensuring guarantees in the legal process, and the exceptionality of imprisonment as a measure. In fact, in 1998 juvenile justice was still being considered as belonging in the family court (Cortés and Vásquez, 2005) or making decisions based on judges from both the family and penal realm.

The greatest changes started in the year 2000, when the third post-dictatorship democratic government with President Lagos (2000-2006) began. The Penal Procedure was reformed in a progressive process that took five years to implement, that is until 2005, in the whole country. This reform involved the modification of the penal code, shifting from inquisitorial to adversarial. It also required the creation of new institutions, such as the Public Ministry that is now in charge of prosecution, and the Public Defendant responsible for the defence. The new regulation left no space for under 18-year-olds to enter the adult system.

However, due to the concentration of interests and efforts in the Penal Procedure reform, all talks about a juvenile justice reform halted. The Penal Procedure reform was priority and was already being discussed (Gobierno de Chile, 1999; Sepúlveda, 2004). Only once it was already in the implementation stage, political discussions to create a new Juvenile Justice System started, with youth offending taking more national relevance than ever before.

The project of a new juvenile justice system was presented to the Deputies' Chamber in the Congress in 2002. It was modified and approved to then continue the legislative process in the Senate in 2004, where it was modified again. Nevertheless, the Deputies did not approve the changes, and a

'Mixed' Chamber [Cámara Mixta] formed by both Deputies and Senators was formed. Various authors agreed that even though at the beginning the project was closely linked to the UN Convention on the Rights of the Child, in the Senate Chamber in the legislative process it became something more punitive and closely linked to the adult justice system, eliminating most of the elements that made it a differentiated specialised system (Werth, 2005; Cillero, 2006; De Ferrari, 2006; Bustos, 2007).

This result can be associated with the increase throughout the 1990s, of perceptions of growing youth offending both in terms of prevalence and seriousness, especially after the emphasis on Human Rights had faded a little. Moreover, as chapter five and six will show, youth offending and the control of young people's behaviour came to take a predominant role in the political and media discourses, transforming into a central element of political campaigns around election periods. The topic went from being almost no one's concern to feature amongst the top three worries of the population in all opinion polls (López, 2000; Dammert and Lunecke, 2002; Duce, 2004; Dammert, 2005) and demands of fast and effective actions plagued public speeches. Chapter five will evidence its growing presence in presidential speeches over time.

It was in this context that, in 2005, a year of presidential elections, the modification of juvenile justice towards a specialised system that deals with 14 to 18-year-olds who display the offending behaviours considered by the Penal Code of the country, was approved in the Congress.

However, the Adolescents' Penal Responsibility Act [LRPA] did not come into effect in the same year of its approval as had been intended. Political disagreements and modifications of the project, together with the lack of appropriate infrastructure to cover the new sentencing options, postponed its implementation until 2007, in the meantime an expert commission to analyse the conditions for implementation was created (Congreso Nacional de Chile, 2005; SENAME, 2012). In the time between the publication of the LRPA

(2005) and its implementation (2007) there were other two key institutional changes.

Firstly, in 2005 the Family Law (Law 19,968) was implemented. It also shaped the situation of young people in trouble. This new regulation assumed the responsibility of the care and protection of all under 18-year-olds, relocated the age of criminal responsibility at 14 years of age (under the tutelary system 16 was the age to test the young persons' discernment and perhaps to send them to the adult system), and dealt with minor offences of 14 to 16-year-olds. That year, and with the Penal Procedure Reform implemented in the whole country, the old institutions in charge of dealing with children and young people in trouble or in need of protection were completely left behind and became unable to work with juveniles anymore. Secondly, in 2007 before the LRPA was implemented, it was reformed by the Law 20,191. This new legislation, for example, increased the mandatory minimum time of imprisonment determined by the LRPA (Law 20,191, 2007).

The following charts illustrate the reform process. The first chart presents the system to deal with young people in trouble in its three main moments of time. The second chart refers to the key events in the reform process.

*Figure 1: Categorization of juvenile justice*

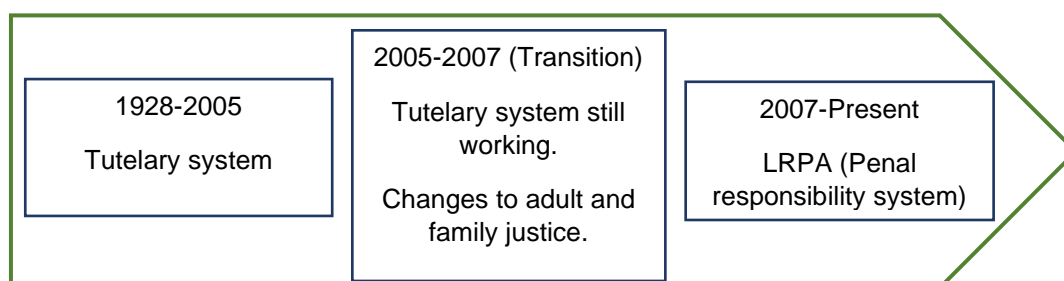
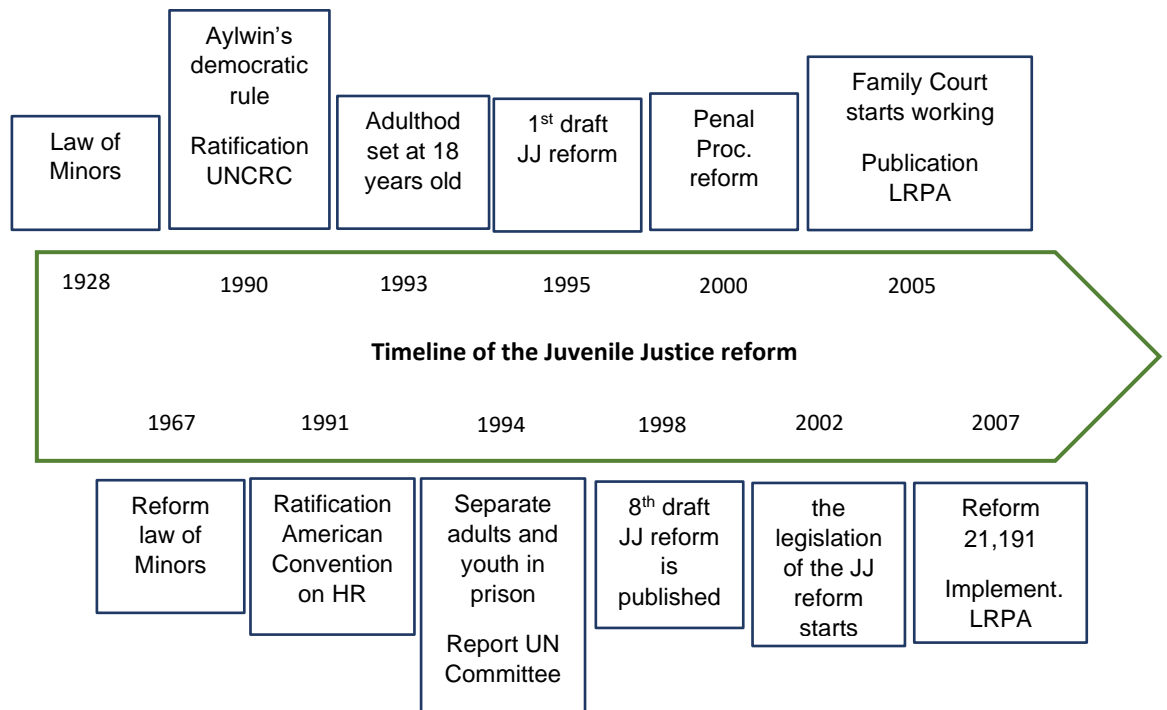




Figure 2: Timeline of the juvenile justice reform



### 3. The LRPA: The current juvenile justice system in Chile

Juvenile justice went from the tutelary approach presented in subsection one, to a responsibility system based on due process. This meant a series of changes. Firstly, regarding the population the system dealt with. While the Law of Minors dealt with all under-16-year-olds and those between 16 to 18 years of age who had been declared 'lacking in discernment', the LRPA dealt with all 14 to 18-year-olds who were reported to the authorities to have committed the offences stated in the Penal Code. All under-14-year-olds were considered to have no criminal liability, and all protection cases were dealt with by the Family Court. As a consequence, there was a separation of functions between punishment and protection, and a clear age gap was defined, creating a specialized system.

Secondly, instead of being about protection, the LRPA's ethos is promoting juveniles' responsibility for their behaviours, which includes respect for societal rules, social integration of juveniles and the avoidance of recidivism (LRPA, 2005). Following this line, the sentence was thought to be educative rather than punitive (Duce, 2009; Berríos, 2011). However, while the focus of the tutelary system was in the moral re-education of children and young people, the LRPA sees the sentence as an educative process to teach responsibility. Therefore, instead of implying a process of the State raising the child, it means teaching them a lesson. In consequence, there was also a consideration of the principle of parsimony, which refers to sentence for the shortest possible length of time whilst making sure the educational principle is fulfilled (LRPA, 2005; Santibáñez and Alarcón, 2009).

Thirdly, the legal institutions were replaced. The Court of Minors and the Judge of Minors were replaced by the same institutions created for the adult penal system in the reform of the Penal Procedure in the late 1990s. Now there was a Public Defendant, a Prosecutor, two Penal Judges, a Guarantee Judge and an 'Oral' Court (in the previous system everything was written while in the new one the trial involves the recorded verbal presentation of evidence, prosecution, defence and sentencing). SENAME continued to be the technical institution in charge of applying or coordinating the measures determined by court.

Fourthly, the procedure was radically transformed. The tutelary system left all decisions in charge of only the Judge of Minors, there were no clear formal rules to follow, so it depended on their personal notions of the risk and need of protection the young person was facing. The LRPA, instead, was subjected to the penal procedure reform. It established clear guidelines to follow: if the offence was minor, it could be solved without trial. If the offence was serious the prosecutor had to gather the evidence, with help from the police, to be later presented in the Oral Court in front of the three judges. The judges do not have access to the evidence before the hearing. Juveniles are also represented by a public defendant. Moreover, while under the tutelary system the protection measures were undetermined, the LRPA offers a

series of possible penalties according to the offence and they have a determined length.

Therefore, now there was a focus on formal interventions, an adversarial system with a fixed catalogue of offences and possible sentences, due process and the guarantees for the accused. Nevertheless, this has generated criticism because when specialized professionals are not available, those who work with only adult population can be called, which means professionals are not fully dedicated to juveniles and their special needs (Santibáñez and Alarcón, 2009, Committee on the Rights of the Child, 2015). Likewise, prosecutors, defendants and judges keep working in both systems, which leads to an overload of cases and handling the legal process under the same logic instead of two separated understandings of offenders (Werth, 2013). In fact, even though the professionals that work in the system are supposed to be trained to work with juveniles, most times it does not happen as the training is not provided or mandatory in practice. In consequence, just as the tutelary system falls in line with a welfarist approach, the LRPA seems to share the downsides of justice approaches as identified by some commentators (McAra, 2010), such as facilitating just deserts and individual responsibility (Muncie and Goldson, 2006) and favouring the adultization of young people (Goldson and Hughes, 2010).

However, as Goldson and Hughes (2010) highlighted, usually juvenile justice systems do not follow one exclusive approach. In fact, according to Cortés (2009) the logic of the tutelary system was never fully abandoned. For example, when young people are considered as in need of care and protection, and their behaviour as the effect of experiences of vulnerability, they are usually dealt with by the family legal system, avoiding their interaction with issues of responsibility and 'guilt', but privileging therapeutic indefinite measures. In the LRPA is it also possible to find the authoritarian and punitive remnants of the institutions and tutelary logic as I will mention below and in chapter six. At the same time, managerial principles affect the performance of the justice system (McAra, 2010), because the therapeutic programmes are subject to assessment of their effectiveness, and are also

required to justify intervention approaches based on evidence. As a result of all of this, a contradictory mix of protection, responsabilisation, diversion and effectiveness can possibly be seen in the Chilean juvenile justice system. The result is that all the blame is located either on the young person or on the parents, while the role of the State or social structures remain unquestioned.

As a consequence, the result has been another punitive system, with high use of custody measures for long periods of time (Cillero and Espejo, 2008; Couso, 2009; Berríos, 2011; Werth, 2013; Langer and Lillo, 2014). The main difference with the previous system is that now their institutionalization is due to a sentence instead of protective measures. The statistics also show an increase in young people having contact with the system, from 7,097 in 2007 to 15,521 in 2010 (SENAME, 2012), and of juveniles having contact with the police, from 53,386 in 2008 to 54,932 in 2012, reaching 57,227 in 2011 (Beloff and Langer, 2015), a year of student demonstrations where the abuse of detention measures called the attention of the UN Committee on the Rights of the Child (UN Committee on the Rights of the Child, 2015).

Moreover, the situation of imprisoned young people in Chile has been widely criticised, firstly based on overcrowding rates (SENAME, 2012); the length of their sentence, which does not answer to the proportionality principle (Berríos, 2011); and the bad conditions they live in (Cillero and Espejo, 2008; Dionne and Zambrano, 2009). The infrastructure of youth custody centres in 2012 could not ensure clean water, individual beds, or educational programmes for all interns (Inter-American Commission on Human Rights, 2011; SENAME, 2012).

Furthermore, in smaller cities the same building serves as an adult prison and all youth custody centres. Thus, the separation of adults and juveniles is only ensured at night (Santibáñez and Alarcón, 2009; Inter-American Commission on Human Rights, 2011). The use of pre-trial custody has also been analysed. In the tutelary system it was used in 70% of cases waiting for the 'discernment' test, of those, less than 30% would be considered to have 'discernment' after the test (Langer and Lillo, 2014). In the new system there

seems to be a significant reduction in pre-trial institutionalization, and most lead to a sentence. However, pre-trial detention now lasts for a longer period of time (Berríos, 2011), and there has not been a global reduction of institutionalised young people, because those sentenced to custody for longer time periods have increased (Langer and Lillo, 2014; Beloff and Langer, 2015). Moreover, Beloff and Langer (2015) highlight the substantial increase of juveniles convicted to confinement in a 121% from 2006 to 2012, while there is no indication of an increase in juvenile arrests. In terms of effectiveness, recidivism rates were around approximately 50% (SENAME, 2012). As a result, the situation of the young person as a developing and thus less responsible person is not ensured (Couso, 2012).

This research will attempt to explain this radical penal transformation from a tutelary juvenile justice focused on children considered to be in 'irregular situations' under unlimited judicial discretion, based on an unrestricted protection paradigm where Children became objects of State power, to a justice approach based on responsibility for pre-determined offending behaviour, the procedure designed for adult offenders, the international guidelines of due process, and with a focus in the social reintegration of the young person. The purpose is to understand the reasons behind this reform, how did it take place, and how this change ended up being considered punitive as well.

Following from this, chapter two will situate this study in the context of penal transformations literature: What does it tell us about how and why justice systems change? Can this literature provide some clarification regarding the elements underlying the Chilean juvenile justice reform? What challenges does the Chilean case hold for the way we understand penal transformations?



## **Chapter 2: Penal transformations**

The previous chapter presented the ethos, institutional and procedural changes that took place in Chilean juvenile justice. These changes seem to imply a break from the past. However, the Adolescents' Penal Responsibility Act still had a strong presence of a tutelary logic and its own share of punitive practices which did not go in line with the international agreements ratified by the country in this regard. Therefore, it seems there are some elements of continuity as well, despite the radical reform of more formal aspects of the juvenile justice system (such as the procedure, for example). This leads to questions of how to explain the complexity and dynamics of the juvenile justice transformation, understanding it as a mode of transition from older to newer and, as this thesis will evidence in chapters five and six, a symbol of the social transitions that were taking place from authoritarianism to democracy.

Within the sociology of punishment there is now a substantial body of literature which has researched the drivers of penal transitions. Much of this literature has focused on the impact of the transition to late modernity on penal forms, with some commentators such as Wacquant (1999) and Muncie (2005) claiming that there is a degree of convergence between jurisdictions, including a punitive turn. Others, as for example Melossi, (2004; 2011), would claim that more localised structures and cultures have mediated global pressures and reinforced differences between jurisdictions. However, it becomes relevant to know how can this literature help to explain transitions within Chile, as for the most part its empirical focus has been western liberal democracies in the global north.

Importantly, there is a small but growing number of studies in Latin America and in those European jurisdictions which have transitioned from authoritarian to democratic regimes (for example Greece, Spain and Central Europe; see Cheliotis and Xenakis, 2016; Medina-Ariza, 2006 and Brandariz-García, 2018, and Haney, 2016 respectively). As this chapter will

demonstrate, key focal points in this literature are the high level of ambivalence in penal aims that sometimes accompany these transitions and the role that the power to punish plays in attempting to build a new consensus (see for example Sozzo, 2016 and Super, 2016).

Latin America is a region that had an important presence of authoritarian regimes and re-democratization processes in the second half of the 20<sup>th</sup> century, as 14 out of 20 countries experienced authoritarianism in the 1960s and 1980s, while four of the 20 countries were under dictatorships in the 1950s. However, as I will show, the characteristics of penal regimes differ post transition, and Chile itself may at first sight seem an example of penal exceptionalism.

The purpose of this chapter is to present what is known about penal transformations, evidencing the gap of knowledge my own research will attempt to address, by focusing on a specific case study that has not featured in the wider literature, and thus allows to question its reach and even how the main drivers described by the literature of penal transformations and State punishment tend to be understood. In consequence, I will start by presenting these drivers of penal change. This will be followed by a section dedicated specifically to penal transformations in societies that have experienced recent transitions from authoritarianism to democratic regimes. Finally, I will broadly refer to the contribution of this research.

## **I- Drivers of penal transformations**

There is a growing body of research in sociology of punishment that attempts to identify drivers of penal transformations. Within this literature, some commentators contend that forces associated with late modernity have led to greater convergence between penal systems -driven by factors such as globalisation, impacts on public opinion and the media; others contend that a number of more localised structures and cultures have mediated these wider



forces and reinforced differences between jurisdictions (such as different constitutional arrangements or political economy models -see for example Cavadino and Dignan, 2006 and Lacey, 2008; 2009).

The purpose of this section is to present these main elements that theory has associated as shaping and constraining penal transformations. They will be divided in two broad categories, as convergent trends when they imply elements that have been described as promoting similarities in crime control and State punishment across different societies; and as divergent when they refer to elements that make jurisdictions – even those with similar backgrounds – differ.

Nevertheless, it is key to understand that convergent and divergent trends and factors do interact with each other. Convergent trends put pressure over the jurisdiction, or spread some ideas over others, make suggestions and influence the local reality. However, the shape this influence takes is mediated by the particularities of the jurisdictions, the elements that make it diverge (for example in terms of institutional resources). Therefore, there is a permanent feedback between convergent and diverging elements, co-developing the direction followed by reform processes.

## 1. Convergent trends

### *a) Transitions to late modernity*

Late modernity has come to refer to the feelings of insecurity and anxiety that have been appearing and expanding in modern societies (Garland, 2001). These feelings imply a change in the interaction between the people living in modern societies and the world, leading to the growth of fear, individualism and exclusion (O'Malley, 2007). Modern societies and the feelings they seem to generate have been associated to changes in the ways of production and their impact in economic mobility, working stability, the distribution of salaries, social status and community solidarity (Young, 2007). They have also been linked with less control and increased perceptions of risk of people of being

harmed whatever directly or indirectly, increasing in turn the amount of stress of unknown situations or people (Garland, 1998; Simon, 2010). This has led to less tolerance and higher demands of control, with the purpose of regain security (Hancock and Matthews, 2001; Hughes and Follett, 2006; Muncie and Goldson, 2012).

Following this line, Hope and Sparks (2000) have identified the risk of crime as one of the main topics in late modern societies. Evolving into a new political strategy that Simon (2006) termed 'governing through crime'. Crime and punishment have been claimed to effectively impact on election results, as the general population seems to request and support tougher approaches in order to calm their fears and anxieties (Garland, 1996; Tonry, 2004b; Muncie, 2005; Simon, 2010; Koch, 2017). In consequence, politicians started fighting for attention through reactions to crime, risk and fear (Hope and Sparks, 2000). The result has been the development of populism as key in late modern politics (Sparks, 2003), leading to the privilege for more punitive measures (Garland, 2001; Roberts and Stalans, 2000; Simon, 2006). For example, in England actions such as loitering have come to be punished, despite not being illegal, under the logic of preventing moral and social transgressions in young people (Muncie and Goldson, 2012).

Therefore, the feelings of risk, fear and anxiety described in late modern societies answer to a series of elements and have encountered responses mainly in the penal realm. I will now present the main elements associated to the direction followed by crime control and punishment in late modern societies, and how they relate to the negative feelings already described.

#### i. Globalization

The concept of globalization, complex and lacking a specific definition, has been understood in terms of the mobility of knowledge, practices and trends that cross boundaries and spread around the world, such as the adoption of other economic, social, or cultural elements. Rising or decreasing crime rates in many different nations in the same period or the fluctuation on immigration, easier in a more flexible globalised world, have also been described amongst

the effects of the modern world and as meaningful in shaping local criminal justice.

This has resulted in more heterogeneous societies (Pratt, 2008b), which have been claimed to impact on social cohesion, hierarchies, security, the organization of a given community, and the capacity of welfare policies and institutions to deal with new increasingly diverse populations (Wacquant, 2012). For example, Fonseca (2018) highlights how in Europe there was a resurgence of the anxiety towards minority groups, increasing requests for their control. The author claims that feelings of insecurity are fuelled by fears of limited social mobility, and a response to it is the strengthening of crime control and punishment. This is also visible in Brandariz-García (2018)'s research regarding Spain. The author points out how political discourses about crime gathered political traction in connection with the increase in migration, as it impacted on general perceived feelings of security.

Economic international trends and fluctuation of capital at a global scale have also been associated as shaping offending and crime control patterns, as they impact on prosperity, growth or financial depression (Morrison, 2000). This implies the influence of economic agreements and the demands or requirements of international monetary institutions to access to their resources, such as the World Bank for example. As they could also drive jurisdictions towards similar guidelines of economic, social and crime control policies, privileging the development of policies more based on international market-principles than in local social values (Muncie, 2012).

Another of the ways in which globalization promotes convergence, is through policy transfer. This refers to the incorporation in some places of the policies that other localities have designed and implemented, leading to the growing interconnection between jurisdictions (Pakes, 2010). This means the increased similarity in the way different jurisdictions address certain issues – as youth crime, for example - becoming closer whatever in terms of architecture, underlying principles, approaching paradigm, discourse or practice (Newburn and Sparks, 2004; Muncie and Goldson, 2012).

For example, globalization has been used to explain the punitive turn in western jurisdictions, in what has been called the 'Americanization' of policies in the United Kingdom (Newburn and Sparks, 2004; Muncie and Goldson, 2012). This is due to the expansion and export of penal policies from the United States to Europe after the welfare crisis, which has been mostly addressed in terms of the import of 'Zero tolerance' (Wacquant, 1999; Rivera, 2005; Muncie, 2005; 2012). This import has also been described in Latin America (Chevigny, 2003; Wacquant, 2003; Dammert and Malone, 2006; Pinheiro, 2007; Becket and Godoy, 2008; Müller, 2012; Carranza, 2013), where it has been associated to the increasing imprisonment rates in the region (Carranza, 2013; Hathazy, 2015; Fonseca, 2018). Becket and Godoy (2008) for example, identified an average rising of 62% between 1998 and 2008, which reached 305 inmates per 100,000 habitants in Chile and Brazil (Müller, 2012).

Therefore, globalization is a complex and multifactorial element of modern societies, as they are more connected and have greater interaction with the wider world. Globalization can influence developments in local crime control, institutions and policies by privileging the expansion worldwide of some ideas, models and rules over other, promoting heterogeneous societies, and impacting on the local economy through the flux of international markets, which influence the feelings of anxiety, individualism and fear associated to late modernity.

## ii. Public opinion

This has been understood in terms of the expression of emotions and interests that become collective, such as for example concerns with security and victimization (Garland, 2001). Also as the emergence of organised pressure groups with specific purposes, for example victims' rights (Lacey, 2008). Regarding public understanding of 'youth', it has been described as divided in at least two colliding stereotypes. If they are children or victims of crime, they are viewed as innocents who need protection against harm.

However, if they have presented any kind of offending behaviour, then they are regarded as fully responsible adults (Jewkes, 2011).

The complexity of this is the lack of balance and nuance. The personalized stories and explanations of youngsters' attitudes and life experiences are usually lost in daily communication, while perceptions of them as an undistinguishable dangerous, risky and intimidating group that erodes public spaces expand (Stenson, 2000; Nash, 2006; Halsey and White, 2008). Public perceptions have also been associated with increased feelings of anxiety towards a perceived greater permissiveness in a context of softer legislation (Hall, 1978). Softer legislation can be understood as the preference for rehabilitative and decriminalising approaches, and it is considered to generate rejection from the general public (Tonry, 2004b). In consequence, young offenders are stereotyped, and further control is promoted to decrease the risk or disturbance they represent.

Other elements considered significant in terms of public opinion are 'language' and 'subjective meaning'. The public acts and understands the world according to previous ideas, which are crystallised by language, which also allows individual notions to expand as moral and social explanations of the behaviour of others. This has been usually associated with labelling processes (Rock, 2012): the social definition of an act as criminal and certain individuals as offenders (Becker, 1963), influencing their future possibilities, relations with general society and behaviour (Cohen, 1972). Because once individuals and actions have been labelled as deviant new policies and measures are generated to target them, despite other factors involved on their behaviour.

There are also studies that highlights how little the public actually knows about the causes of crime and the legal processes; and how they privilege softer measures and rehabilitation when directly asked (Indermauer and Hough, 2002; Gillespie and McLaughlin, 2003; Allen, 2006; Hough and Roberts, 2012; Sellers, 2015). According to Christie (1977) this lack of knowledge relates to the professionalization of justice systems which took the

knowledge away from the general population, denying them full participation in justice processes and locating it on a closed group of expert professionals who speak technically, making access and understanding of the process harder.

In fact, Gillespie and McLaughlin (2003) conclude on their own research that the public's views can change if the situation is presented to them while stimulating moral ambivalence, or if the life story and underpinning factors for offending are explained. The authors recognise that some deeply rooted punitive attitudes are hard to change, because they are sustained on beliefs, values and a vision of the world developed during childhood. However, personal experience or hearing others' personal experiences can make people vary the way they interpret further information around this topic. In fact, participation in community measures and increased social trust relate to less fear of crime and a more neutral attitude towards crime and young offenders (Dammert and Lunecke, 2002). Likewise, according to Tonry (2004b), the public is divided between wanting criminals punished and treated. Consequently, people appear to expect contradictory outcomes from justice systems (Indermauer and Hough, 2002). Thus, public opinion might be more varied and softer than expected, people can change their perceptions, providing them with some nuance and balance (Tonry, 2004a) that has not been properly recognised. Following this line, public opinion extracted from polls and surveys is neither absolute nor straightforward.

Furthermore, Sprott (1999) claims that public's interest for imprisonment as a response to youth crime has more to do with the belief that other measures are ineffective, rather than real trust in custody. Hence, the real knowledge that the public may possess is usually unknown and unconsidered by policy makers, and according to Roberts and Stalans (2000) quite sophisticated and contrary to politicians' expression or media portrayals of it.

Nevertheless, public opinion has also become increasingly used as a tool for political competition. This means that politicians use the abstract concept of 'public opinion' to manifest they have the support of voters for certain policies

or for changing or strengthening the direction policies are following (Roberts and Stalans, 2000); or that politicians refer to the suffering of the common citizen to justify their policies (Koch, 2017). That means politicians use the 'imagined' public opinion based on the understanding of what 'the mass' is supposed to want, or the 'represented' opinion spread by means such as the media, which role will be properly addressed below.

### iii. Media

The media has been mostly identified in the literature as having a role of intermediate between politics, the national and international context and public opinion, acting as the official channel of communication and a widespread source of information about the world – including crime (Hough and Roberts, 2004; Greer and Reiner, 2012). For example, in Latin America where the interaction between the political elite and citizens has been identified as weak, the media has become a key mediator which can promote fear, insecurity and hostilities (Dammert and Malone, 2006; Pinheiro, 2007; Santander, 2010).

Consequently, the media defines what the general population knows about crime (Garland, 1998). Thus, influencing public and political reactions by defining youth crime in certain specific ways, usually in terms of negative stereotypes, biased constructions of the events and people involved, the support for punitivism and the maintenance of the status quo (Cohen, 1972; Hall, 1978; Jewkes, 2011).

Youngsters are usually portrayed as evil (Jewkes, 2008), dangerous (Goldson, 2006) and fully responsible individuals (Phoenix, 2009; Fox, 2015), who cannot change or rehabilitate (Jewkes, 2008). Their offending is presented as violent, constant and random attacks over undeserving victims (ibid); and it had been associated with a lack of social values and self-interest (Maruna and King, 2009).

Therefore, young offenders become 'other', someone who is not like the rest of society and does not belong (Jewkes, 2008). Thus, the behaviour answers

only to them instead of to greater social issues. Moreover, the images selected usually relate to the lower and more deprived sectors of society (Pitts, 2003), their habits, places and fashions (Cohen, 1972), also impacted by demographic characteristics such as gender, age and race (Kidd-Hewitt, 2002). Therefore, offending and evilness came to be associated with 'bad neighbourhoods' and 'the poor'. This leads to the criminalization of youngsters, and their exclusion of certain social spaces and opportunities. As a result, the quality and objectivity of the information spread have been widely questioned.

Moreover, the constant representation of the world as a dangerous place (Altheide, 1997) increases perceptions of risk of future victimization, feeding into the anxieties of late modern societies. This can lead to pressure for security and public protection; and support for more punitive and controlling justice measures despite the needs of youngsters, in order to ensure adult's feelings of security (Hughes and Follett, 2006). This can result in targeting those with previous history in the justice system, who remain as 'suspects' despite their real present behaviour (McAra and McVie, 2005). Therefore, the media acts as a platform to spread inclusion or exclusion (Jewkes, 2008). This is especially complex when we consider the ownership of the media is strongly concentrated, as in Latin America, where it tends to act as an extension of the conservative right-wing (Santander, 2010).

In consequence, media portrayals have been identified as intentioned constructions of social life (Cohen, 1967; Kidd-Hewitt, 2002; Jewkes, 2004; Surette, 2011), which respond to the ideological and political context (Egan *et al.*, 2013). Media influence expands by the fact they also act as the main source of information of what the public is supposed to want, assuming the role of the representation of public opinions and interests to politicians as well (Green, 2009). So, the media would have a double informative role impacting on crime control measures (Greer and Reiner, 2012).

Nevertheless, media influence is complex, and its study has not been exempted of controversy. Initially, the media was considered to be highly



influential and directive over a passive public (Kitzinger, 2004; Carrabine, 2008). However, given the lack of evidence supporting that statement, the audience came to be recognised as at least active enough to interpret the information provided (Gillespie and McLaughlin, 2003). This active role gained recognition and lately the public was understood to both interpret and select media consumption based on interests, experiences and world vision (Kitzinger, 2004; Carrabine, 2008). Thus, media influence would be reinforcing instead of challenging, because it would strengthen those views that led to that media selection on the first place (King and Maruna, 2006; Green, 2009).

Then, media 'frames' came at the centre of the discussion. These work as guides of how to analyse new events (Green, 2009), acting as definers of new situations based on previous knowledge and information, which was also provided by the media. Hence, media impact was understood in terms of shaping the topics for public discussion (Altheide, 1997). As such, media influence would be significantly more subtle than was initially thought to be, though it is generally associated to defend the status quo, reinforcing structural ideological biases, or adapting to public interests in order to profit in a competitive economic framework (Kidd-Hewitt, 2002).

#### *b) International rights discourses*

International rights discourses, conventions, agreements, treaties and guidelines provide a common cosmopolitan framework to all countries that ratify them, and a reference of what is worldwide expected to those that do not comply to them. The difference with the elements presented in the previous subsection is that the strength of these rights documents and discourses depends on the active willingness of a country to accept them. Otherwise, they do not have strong impact in the local context and can be mostly dismissed, for example the United States has not ratified the UN Convention on the Rights of the Child [UNCRC]. However, this has not impacted on their relationship with other nations as market, policy and

migration fluctuations could do, with or without national acceptance of those particular conditions.

Regarding juvenile justice, we can find the already mentioned UNCRC, the United Nations Standard Minimal Rules for the Administration of juvenile justice (the Beijing rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the JDL Rules), the American Convention on Human Rights (San José de Costa Rica Pact), and others which also depend on jurisdictions' spatial location. All these documents provide a basic framework to be applied no matter the local context. All of them emphasise, for example, the need for differentiated treatment of young people from that of adults (Junger-Tas, 2008; Muncie, 2012).

Furthermore, they have promoted debates about core issues relating to juvenile justice systems, including young offenders' needs and rights. For example, the Beijing Rules emphasise the importance of consistency between penal and civil rights and responsibilities (Goldson, 2013). This has evolved to a highly significant and widespread debate about the age at which young people can be considered responsible for their actions, and the degree of responsibility that competes to them.

International conventions also emphasise on the need of due process, recognising the rights of young people to actively and knowledgeably participate on their legal process, while promoting decriminalization (Goldson, 2013). This refers to decreasing their contact with the criminal justice system. The reason behind this is that research has shown how previous experience in the system makes further involvement more likely, stigmatizing children and young people, even if the first contact was under protection grounds instead of offending (McAra and McVie, 2005). The result of this emphasis has been the recognition of diversion as a better response to minor offences (Pitts, 2003).

Even though these documents do not imply mandatory changes in each jurisdiction, they do involve reports, evaluations and suggestions of the path juvenile justice should follow. Moreover, as the previous chapter evidenced, they can become a source of pressure or the starting point for a reform. The closeness between these regulations and local justice institutions impact on the perception of jurisdictions as punitive or not. It also impacts on the alternatives that are more supported in terms of approach, for example by privileging welfare and justice paradigms (McAra, 2010), focusing not only on protection but also rights, and identifying custody as a last resort (Goldson and Muncie, 2006). Therefore, as Pakes (2004) stated, criminal justice systems are less self-contained than in the past, being influenced by the demands to apply the guidelines.

These trends of convergence establish a connection between what is happening in many jurisdictions at the same time, facilitating the exchange of knowledge and the transference of ideas. However, their explanatory power is limited. For example, late modernity and globalization are complex concepts, lacking one specific definition. Moreover, most jurisdictions -if not all- are subject to global pressures and present feelings such as fear and insecurity. However, the world presents a high variation of penal policies, justice system and crime control approaches, and not all jurisdictions have turned more controlling, populist or punitive (Cavadino and Dignan, 2006; Tonry, 2007; Lacey, 2008; 2009).

Furthermore, Tonry (2007) claims that fear and insecurity appear to respond to the social and economic local context that interacts with a broader global framework of pressures (for example, economic competition), while comparing their performance with other better valued nations. Similarly, the convergence or transference of knowledge is also transformed in the process, changing and adapting to the new setting (Garland, 2011; Melossi, Sozzo and Sparks, 2011; Nelken, 2012). In the words of Newburn and Sparks: *'It is in the socio-political and cultural context in which 'transfer'*

*occurs that has the most profound effect on the eventual shape and style of the policy concerned'* (2012:5). According to Melossi (2004), this is due to the impossibility of correctly translating such measures from one culture to another. This is also interfered by local previous approaches, values, concerns or even national budget framing the possibilities of policy implementation. This have been claimed to relate to the status of the sovereignty and self-definition of a given jurisdiction, in terms of the capacity it shows to be more or less influenced by external pressures. For example in terms of 'negative policy transfer', because the result of the external influence is the rejection of a given policy (Newburn and Sparks, 2004). Therefore, the effects of convergent trends are mediated by local circumstances and developments, which are not equally receptive to these influences.

## 2. Elements of Divergence

This subsection will refer to the elements I found in the broader literature that could be understood as defining the local characteristics of each jurisdiction, such as cultural processes that mediate the need to make changes (McAra, 2005), or institutional dispositions that imply differentiation in the way jurisdictions work.

### *a) Political Economy*

The concept, despite being understood differently by varied authors, has always implied the influence of economy into politics. In consequence, even though there are common philosophical or structural elements in other jurisdictions, the resulting product is based in the internal decisions of local actors, governments, institutions and processes. The political economy has been identified as relevant because of its impact on elements such as social capital, the power relations, class divisions, labour distribution, distinctions and interaction within the community, which in turn shape crime control policies (Reiner, 2007).

The local economic system, such as capitalism, is relevant as it regulates the market in terms of consumption but also production and employment (labour market), impacting on the economic position of communities and individuals within a society. This could lead to the expansion of feeling of security or insecurity, put at risk social stability and alter the interaction between social classes, such as interests and possibilities of 'going up' or fears of 'falling down' (Young, 2007; Wacquant, 2012). Moreover, according to Melossi (2004), the economic organization can impact on a context of competition, strengthening a relationship between punishments and rewards as part of the logic in which society functions. De Giorgi (2007) associates this with the utility of penal strategies to control the value of human labour, preserving the economic system and the relations of production.

Local economic organization has also been linked to patterns of offending behaviour. For example, property crime has been described as increasing in times of recessions, crime rates being higher in poorer sectors and prisons being filled with people from low economic backgrounds (Morrison, 2000). Similarly, the economic situation a determined jurisdiction is facing has been associated to the punishment and justice apparatus. For example, Rivera (2005) highlights the connection between fiscal crisis, the expansion of punishment and the birth of 'nothing works', which resulted in the development of new approaches such as sentencing guidelines and the business of security and penal companies. Simon (2010) also highlights the growing business of security and the profit it has brought to private companies.

Regarding politics, it is a very broad concept that involves, for example, the structuring framework of a jurisdiction, such as the political order (for example authoritarian regime or liberal democracy). Politics has been recognised as a key driver of crime control due to its symbolic power. Politicians can generate new meanings, lead debates, define the interaction with other jurisdictions, and decide which topics are to be considered as central (Jones and Newburn, 2004). For example, political discourse about crime and justice can impact how crime is understood and what is considered

the best way to deal with it, thus influencing the future of criminal justice. A good example of this is the politicization of victims' movements, which brought about a new shift in political discourse towards the recognition of victims' rights. In some countries this resulted in the recognition of Human Rights in general and increased participation of victims on their own legal processes, and in others it implied the polarization of crime control practices by opposing victims to offenders (Garland, 2001; Pratt, 2008b).

Therefore, politicians can influence perceptions of crime and possible solutions. The current trend – started in the United States (Downes and Morgan, 2002) – has been to mobilise public concerns and attention from other social problems to crime and punishment as a scapegoat (Hope and Sparks, 2000; Sparks, 2003; Tonry, 2004b; Simon, 2006). This has been mostly described in societies where the trust in state institutions is low, and where values such as individualism are stronger (Lacey, 2008; Pratt, 2008b). In jurisdictions that have evolved towards punitive practices, politicians are seen as constantly reminding people how risky the world is, making the public more receptive to crime control strategies (Tonry, 2004a), and thus more dependent on politicians and elite power to feel more secure and protected, which in turns facilitates the continuity of the status quo.

The influence of political economy in crime control has been analysed, for example, by Cavadino and Dignan (2006) who generated a classification of four types of political economies (neo-liberal, conservative-corporatist, social-democratic corporatist and oriental corporatist), with their impact on punishment, welfare and social rights. According to their analysis, neoliberal societies are more prone to punitive approaches. Lacey (2008) also attributed an essential role to political economy in explaining the differences in penal practices, mediating the interaction between workers (according to their skills), economic security and status, thus impacting in the level of inclusionary or exclusionary practices of justice systems. Moreover, in her work she highlights how the economic exclusion of some also imply exclusive citizenship, impacting on feelings of insecurity, especially in neoliberal contexts.

According to Wacquant (1999) the upper classes turned to demands of a stronger and more involved penal apparatus to contain the social consequences of neoliberalism, such as poverty, inequality, marginalization and social unrest (For example in 2003 he published a paper in relation to what he termed 'the dictatorship of the poor' in Brazil). He highlights how modern penal common sense criminalizes poverty and becomes a tool to sustain the neoliberal conditions of low wages and increased marginality. Thus, being a tool to maintain the economic status quo and distribution. According to the author, the impact of neoliberalism has been stronger in Latin America than in other regions of the world. Following this line, De Giordi (2011) claims the institutions and policies of social control are key in the reproduction of the '*capitalist relations of production*' (p. 114). While according to Melossi (2011), penalty is a part of the overall project of political economy, acting as a mechanism to govern people's behaviour.

At the same time, neoliberalism has been associated to certain values that expand to the penal realm, such as individual responsibility. According to Muncie and Hughes (2002), whose research is based in the United Kingdom, juvenile justice, for example, moves between protection principles (set in international guidelines and deference to childhood) and responsibility and punishment. Muncie (2005), who writes mostly about western reality, also highlights that where free-market principles have spread, incarceration rates have increased. The author claims (2012) that juvenile justice moved towards a justice approach due to the progressive abandon of welfare in neoliberal societies. The effects of neoliberal privatization and reduction of the State have also been associated to the need of a redefinition of the role of the State, which has led to the expansion and harshening of penal intervention (Wacquant, 1999).

Nevertheless, there are different types of political economies, and even jurisdictions that share the same overall classification of modes of political economy, differ in their implementation based in the local culture, social and political institutions (Cavadino and Dignan, 2006; 2007; Lacey, 2008). For example, O'Malley (2012) refers to the difference of the neoliberalism being

applied in Australia in relation to the one of the United States. Therefore, it becomes key to take into consideration the broader political landscape being shaped by the economy. Otherwise, it is hard to grasp how the same model can be implemented in varied ways and how deep it permeates in terms of local power distribution or social values.

For example, in highly hierarchical societies, individuals who are considered to belong to the marginalised lower group, might be more likely treated in ways that have less respect for their civil rights, decreasing their guarantees or the interest for investing on offering them new options, such as diversion or rehabilitation. While in most equalitarian societies, it may be more likely that the concerns and solutions involve the social group as a whole, trying to privilege more standard goods instead of the interest of those in higher positions only (Cavadino and Dignan, 2006). Thus, it can impact on the population being criminalised, the ways they come to be treated both by state agencies and by other members of the social group, how the causes of crime are being understood, and possible prevention strategies.

In consequence, political economy represents a highly complex element. Moreover, politicians have been claimed to create the same problems that then they try to address, shaping popular expectations that then in turn become guidelines and/or limitations for future political processes (Lacey, 2008; People and Smith, 2010).

#### *b) Constitutional infrastructure*

The constitution provides the parameters for both legal and political power. It provides the framework to organise social and civil institutions, it sets the guidelines to the relationship between citizens and the State, the rights of citizenship, the limits of sovereignty and State power, the rules to create new laws and institutions, and the national values and priorities to be protected (for example life or property). Therefore, the constitution provides the logics underlying punishment, because it allows to identify what can be considered as going against social values and moral, thus, criminalised. It also determines the characteristics of local crime control by setting the rules of



representation, power and institutionalization of State's authority (Rivera, 2005; Lacey, 2008). In consequence, it can facilitate or block the representation of different interests, being those the maintenance of the status quo or the promotion of equality among citizens, for example. If citizens' participation is only limited to voting in public elections every certain amount of years, and if all those in powerful political positions belong to a social or economic elite, it is not the same than supporting legislation by public consultation to the citizenship, or granting the possibility for regular citizens to reach powerful political positions.

Following from Miller (2016), accountability is the key concept regarding crime control and punishment trends. The author claims that if there is a greater engagement of citizens and political accountability in a given constitutional system, it is less likely they will resort to repressive practices such as the expansion of imprisonment. Similarly, places with a greater division of parties or political members who come from different sectors and need greater consensus to take decisions, would be less affected by temporary moods around offending, especially if the people involved in the application of justice measures are civil servants instead of politically appointed. On the contrary, countries who depend on bipartisan systems appear to be weaker to the influence of key actors or the interests of any common member of the public, tending towards populism and punitivism. Thus, they are more malleable to momentary or personal interests in spite of long term less popular but more effective approaches (Tonry, 2004a; Cavadino and Dignan, 2006; Lacey, 2008).

According to Rivera (2005), the post war emphasis on a constitutional framework was based on the need to guarantee a certain quality of a political system, especially in terms of limiting State power. Therefore, as Lacey (2008) stated, it can be used as a tool or as a constraint, having a significant role underpinning the power relationships within a given context. Moreover, as constitutions are the result of long and intense social and political processes and changing them is usually hard, they involve an interesting

element in terms of what a society decided was relevant enough as to set as their 'permanent' rules, rights, duties and principles.

*c) The lagged effect of Previous crime control and justice institutions and policies*

The past logics and institutions over which new policies, State punishment and criminal justice are built are another factor to keep in mind. McAra (2010) describes how justice discourses, for example prioritizing welfare of juveniles or risk reduction, can impact on the understanding of the people who becomes involved with justice agencies, and possible explanations for their behaviour, their autonomy and responsibility, and also in the relationship between citizens, communities, the state and crime control agencies, such as the police.

Criminal justice institutions and policies also interact with the characteristics of the national context (such as crime rates, most common offences, and high connotation events), the amount of knowledge and research about the topic, the opinion of experts in the field, the principles present in the national constitution and international agreements that have been ratified by the country. All these elements determine the goals of the justice system, where we can find elements such as public protection, rehabilitation, prevention or deterrence. The lack of comply between past crime control institutions and policies with new rules and expectations can lead to reform, for example, as it happened with the UNCRC and the questioning of the tutelary system in Chile as shown in the previous chapter.

Therefore, justice institutions mediate the understanding a given community has on crime, and the network of public or private institutions related to crime control. In turn, they also play a role in constraining the future directions that reforms and changes may follow. This happens because old institutions set the parameters for new reforms and regulations, and what have happened so far is that the old and the new tend to mix together, instead of erasing previous approaches towards crime and offenders (Brants and Field, 2000; Muncie and Hughes, 2002; Pinheiro, 2007; Goldson and Hughes, 2010).

Nevertheless, authors like Lacey (2008) or Garland (1996) highlight that justice and crime control institutions cannot solve the crime problem on their own. Garland (1996; 2000) has identified strategies such as giving responsibility back to citizens in order to complement state power. While Wacquant (2012), for example, makes the connection to changing and integrating poverty and inequality policies together with justice measures. Therefore, treating criminal justice agencies as one more element working around an issue that is much bigger than just offending behaviour itself.

In this context, the trust on crime control agencies and justice institutions becomes highly significant because it also impacts on interpersonal trust, increasing the anxieties and fears already described as associated with modernity, the consequences of neoliberalism or the uncertain economy. The result can be the support of any new measure, regardless of its effectiveness or damaging consequences in the long term, as long as they help to decrease those feelings of insecurity (Dammert and Lunecke, 2002). Likewise, the lack of trust could impact on the stability of democratic orders, because it involves the questioning of the decisions of authorities, the concern of their performance and the requirement of more effective measures or more capable people in charge.

#### *d) Culture*

Culture is a very broad and contested concept that involves a wide variety of elements, such as habits, values and beliefs, attitudes and behaviours, webs of meaning, and also how the marginalised and criminalised members of society are seen, and the way institutions are constituted (Brants and Field, 2000; Garland, 2006; 2011; Dignan and Cavadino, 2007; Pratt, 2008a).

According to Melossi (2004; 2011) the cultural context is an essential part of policies and practices around crime control. The author talks about embeddedness, referring to how institutions cannot be 'conceived separately' from the historical evolution, traditions and development of social actions within which they emerged. Thus, as shown in the previous subsection, they cannot be simply mobilised to a new context. Moreover, the author states

that the way punishment is conceived also depends on the cultural background. For example, in his 2004 study, he analyses the influence of religion in shaping crime control. He compared the strength of the Catholic Church in Italy with the role of Protestantism in the United States, for example regarding moral norms and what attitudes can or cannot be tolerated. He concludes this has an important impact on the tolerance and severity of penal responses. In this context, culture acts as a 'repertoire' of motives.

Culture also impacts on other processes associated to youth crime, such as transitions to adulthood, or expectations defining cultural goals, for example to become independent, have a successful career and a family (Smith, 2010). Therefore, the culture can shape the general social practices and processes which could then imply future constraints to the direction of changes, for example regarding what is expected on children, what is considerable acceptable as punishment outside and inside the criminal justice system, what actions are considered violent (a good example of this are demonstrations, which in some places are considered a civil right and in others a violent display, regardless of the characteristics of the demonstration itself). As such, if cultural values such as individualism are strong and the identity the members of the social group is weak, it is easier to turn to hard punishment, because it seems as justified by the fault on the own citizens to respect those values (Young, 2007; Green, 2009).

To summarise this section, it is possible to say that there are a series of key elements that interact with each other, driving, shaping, and constraining changes in crime control and justice. The impact of convergent trends depends on local elements such as institutions, models, political and cultural context and so on, which in turn are not sealed off from the influence of late modernity with its effects in public opinion, the media, and the populist use of crime and security.

Even when sometimes they can look very alike, the combination of crime control institutions, policies and outcomes tends to be very unique and specific. Thus, increasing the complexity of understanding and explaining specific changes, to comprehend how, for example, global trends interact with local elements, and to explain reform processes. Therefore, a detailed account of the local characteristics of a jurisdiction and how they have been influenced (or not) by external forces into play becomes relevant. Especially because each location has specific historical elements that set their context, but also the receptivity to convergent trends. However, not all realities have been taken into account in research of penal transformations or when analysing the elements mentioned in this section. The reality of recent democracies or transitional societies is one of those that has been mostly left outside of the theorization of penal transformation. The following section, then, will refer to what is known about them.

## **II- Penal transformations in recent democracies and/or transitional societies**

Cheliotis and Xenakis (2016) highlight the impact of transition from political systems, especially from dictatorship to democracy, in the developments of crime control and State punishment. However, this is a reality that has been mostly overlooked by the broad literature of penal transformations, which tend to focus in developed democratic countries of the global north. Nevertheless, some authors have identified links between local punitiveness and the 'thinness' of democracy (Becket and Godoy, 2008). This, because they grant fair elections, for example, yet the State responsibility to guarantee basic rights is minimal and political participation is limited. Point also mentioned by O'Donnell (1993) in his analysis of Latin American democracies and by Cheliotis and Xenakis (2016) in relation to Greece.

The small but growing body of research about penal transformations in recent democracies and societies that have experienced transitions from

authoritarianism to democracy is not always clear about what are the initial and eventual developments in crime control and punishment, or how reforms develop. Some studies, such as Medina-Ariza (2006) regarding Spain, highlight an initial period of new policies aligned with democratic notions of Human Rights, the respect of freedom and the rule of law, distancing from previous authoritarian practices. Nevertheless, there are some cases such as Argentina, where the approach towards crime control reforms and policies is more ambivalent and strongly reliant on the political and economic stability or crisis of specific moments in time (Sozzo, 2016).

Overall, in Latin America, Greece, Spain, South Africa, Serbia and central Europe, research has highlighted the turn towards punitive measures. In some cases, this turn has been associated to the return of authoritarian practices, as Haney (2016) describes for central Europe. In Greece, for example, it has been associated to the continuation of authoritarian practices but predominantly directed towards immigrants (Cheliotis and Xenakis, 2016). Regarding Latin America, Müller (2012) has described a more violent penal culture, while several authors highlight the increase of punitivism and populism regarding crime control and justice in the region (Dammert and Malone, 2006; Pinheiro, 2007; Becket and Godoy, 2008; Iturralde, 2010; Müller, 2012; Hathazy, 2015; Carrington, Hogg and Sozzo, 2016; Sozzo, 2016). For example, through the expansion of terms such as 'Iron Fist' [Mano dura] against crime (Chevigny, 2003; Dammert and Malone, 2006; Pinheiro, 2007; Becket and Godoy, 2008; Müller, 2012; Carranza, 2013).

This is relevant because research emphasizes that unstable and changing political contexts decrease the public's trust on the capacity of the state and public institutions to deal with national issues, negatively impacting on their legitimacy, and with that in the hegemony of the social order (Gramsci, 1988). Moreover, different authors highlight the link between punitive policies and rhetoric to deal with legitimacy crisis of a given government, the political elite and even the political order of a given jurisdiction (see for example Garland, 1996; Sparks, 2000; Koch, 2017). Therefore, the strengthening of punitive systems has been associated to the weakness of democratic states

(Pearson, 1983). Garland (1996) associated the limitations of sovereignty to a series of crime control strategies, such as the responsabilization of citizens for their own protection, redefining organizational success and punitive responses to re-establish sovereignty.

For example, in the Latin American context, the expansion of tough rhetoric against crime in the public and political realms has been explained as the consequence of these crises of legitimation. After the authoritarian regimes of the second half of the 20<sup>th</sup> century there was a need to validate and strengthen the new political orders or the new political elites in a context of high inequality and limited granting of social services by the State, need heightened by contested political elections that required to find a topic for struggle that could reach all voters (Chevigny, 2003; Pinheiro, 2007). In this context, the focus on crime control and punishment acted as a diversion and consensus strategy, being thus associated to political weakness and a weakened rule of law (Chevigny, 2003; Dammert and Malone, 2006; Pinheiro, 2007; Iturralde, 2010; Sozzo, 2016).

As previously shown in relation to late modernity and populist politics, the focus on crime control and punishment has been described as effective as it helps to control feelings of risk, insecurity, vulnerability and anxiety in the population by strengthening perceptions of control and order, while strengthening notions of power and effectiveness from the State (Garland, 1990; Zedner, 2000; Sparks, 2000; 2003; Koch, 2017). Moreover, by creating a common enemy, it unites people, facilitating social cohesion (Melossi, 2000; Zedner, 2000; Muncie and Hughes, 2002). Therefore, criminal justice acts as a symbol of state sovereignty (Crawford, 2011). In consequence, it becomes a useful tool in times of transition, especially in societies that were divided by the previous authoritarian regimes, such as Chile as chapter four and five will demonstrate.

Moreover, following from Pearson (1983), the advance of democratization processes widens social tension, especially in relation to the discipline of the working class, and the new freedoms of the common people. Which brings

especial attention over young people's behaviour, who under a generalized common sense have become worse in terms of amoral and violent behaviour. However, there is little evidence of that fact and it seems to be more about widespread amnesia of the past than present reality. Under any circumstance, given these perceptions of increasingly dangerous youth, new forms of discipline have come to be developed and implemented, which in the process are also adapted to the new socio-political settings of modern and/or transitional societies.

The study of societies that have experienced recent transitions from authoritarianism to democracy is also relevant because the consolidation of the new political order is elusive (Cheliotis and Xenakis, 2016). In consequence, it is not clear if reform in crime control, State punishment and justice are the evidence of clean breaks from the past, or in fact continuity under a renewed, more modern, shape. For example, Becket and Godoy (2008) highlight how the political use of crime worked as a strategy to limit citizens' rights, all while appearing democratic and keeping the support of part of the population, mostly those fearful of the possible loss of past benefits, lack of control, or the expansion of power in other groups that had been previously oppressed. Likewise, other authors, associate the increase of punitivism as a strategy to control and repress the poor, justifying the continuation of authoritarian practices, the exclusion of citizens and the disrespect for their rights (Wacquant, 2003; Pinheiro, 2008; Müller, 2012). Thus, it appears criminal justice systems served the purpose to expand the new democratic order while limiting the freedom of the recently freed citizens.

Some authors also highlight the role of corruption, the lack of trust in the police and their lack of involvement in the community and violence as increasing fear and limiting trust towards the criminal justice system and crime control institutions, all elements that can also be considered a continuation of authoritarian practices (Chevigny, 2003; Wacquant, 2003; Dammert and Malone, 2006; Pinheiro, 2007; Iturralde, 2010).



Moreover, the predominance of crime and punishment in public discourse distracts the audience from other societal concerns. This facilitates the introduction of conservative policies on different fields that are not being widely covered, despite the public interest they may generate. The emphasis is on greater political visibility and leads to the prioritization of punitivism over effectiveness, knowledge or evidence supporting 'softer' long-term approaches (Bauman, 2000; Goldson, 2002). The result are contradictory policies in order to look efficient in front of any crime control situation, but also influenced by international conventions, the structuration of the justice system and the legitimation of punishment within a rights' discourse.

Therefore, the transitional or democratization context alters the influence of the convergent trends and divergent factors described in the previous section, becoming a key aspect to keep in mind. Moreover, explanations of penal transformations or trends in State punishment in transitional societies are many times studied in relation to these convergent or diverging elements, but they do not necessarily explain how the local context shapes and constrain the influence of more broad theoretical elements. For example, various authors link the neoliberalism imposed in many, albeit not all, the Latin American authoritarian regimes, with the increased punitivism in the region, as they also influenced -and perhaps determined- the significant levels of poverty and inequality in the region (see for example: Chevigny, 2003; Wacquant, 2003; Pinheiro, 2007; Becket and Godoy, 2008; Iturralde, 2010; Müller, 2012; Carranza, 2013; Sozzo, 2016; 2016b). However, the implementation of neoliberalism and the co-shaping processes between the political economy and the transitional context are not explained. The political economy is treated as a completely separated element from the context, following the dominant approach of western developed democratic countries, or the two elements (authoritarianism and neoliberalism) are shown as present, but their interacting dynamics are absent. The need to explore how these dynamics works is central because, as some authors who have studied Latin American transitional societies highlight, the broader literature does not quite fit to explain other regional processes that distance from where most of

the theory has been developed (mostly the United States and the United Kingdom) (Chevigny, 2003; Becket and Godoy, 2008).

However, as highlighted in the previous section, the local politics, culture and previous institutions shape the demands, needs and expectations associated to justice systems and State punishment. For example, according to Iturralde (2010), the impact of elements such as neoliberalism or globalization is indeed a consequence of the regional delay in most aspects due to the authoritarian regimes. Following from Dammert and Malone (2006) there is also a strong fear of crime in the region, which has become a top political priority, as a result of the economic, political and social insecurities brought by the landscape of inequality and poverty already mentioned.

Nevertheless, most of what is known about the underlying context, drivers and dynamics that shape penal transformations in recent democracies, especially regarding comparison between the past and the present, is limited by the lack of systematic registry of data in general and regarding crime and punishment in specific in the Latin American region (Weaver and Maddaleno, 1999). Interestingly, this has been at least partly explained by the dictatorships' efforts to hide and control information (Chevigny, 2003; Cheliotis and Xenakis, 2016). In consequence, the body of research dedicated to analysing and explain processes of penal transformation in recent democracies is fairly limited. Moreover, the existent literature does not usually provide clear in-depth explanations of the influences of the past, all the local factors playing a part in the reform process, and how the dynamics of influence and co-shaping with global trends and international pressures or guidelines work. How much does the authoritarian past impacts on the present decisions to reform crime control mechanisms? Are reform processes defined by the authoritarian past or they evidence a break from it? For example, as chapter four will demonstrate, Chile kept the Constitution and a substantive group of the political elite from the authoritarian regime. On the contrary, Spain created a new constitution in 1978 to distance from Franco's regime in their process of democratic consolidation. This of course alters the characteristics of a jurisdiction, how it interacts with the wider

world, how accountable it is, the power of the State and the power of the elite to decide, for example, the local implementation of new crime control and punishment policies.

### **III- Understanding the transformation of juvenile justice in Chile**

The present research intends to contribute to the gap of knowledge regarding Chile in the literature of penal transformations. In doing so, I will also contribute to the discussion of penal reform regarding the reality of a Latin American (i.e. global south) and recent democracy example. By privileging an in-depth approach through interviews with key actors and the analysis of key documents, it will consider the local historical, political, economic, social and cultural context, and the impact of external elements and convergent trends over the country. Therefore, it will focus on explaining the reform of the juvenile justice system together with the dynamics between both the past and the present and local and global elements. The purpose is to provide a clear understanding of the reform process, a comprehensive explanation of the elements behind penal reforms and their dynamics of interaction and impact, avoiding oversimplifications and reductionisms that could lead to misunderstandings of the role of the different drives of change, due to the lack of knowledge about the particularities of the jurisdiction and processes under study.

Moreover, Chile is a particularly interesting site to explore penal reform, as it provides elements that differ from other case studies. For example, at the time of the debates and implementation of the juvenile justice reform, Chile differed from the concerns identified in European countries regarding immigration (Lacey, 2008; Wacquant, 2012; Cheliotis and Xenakis, 2016; Fonseca, 2018). Moreover, other Latin American countries might be considered similar regarding the processes of penal transformations. For example, given the generalized context of authoritarian regimes and the wave of juvenile justice reforms in democratic times over the 1990s and early

2000s. However, Chile had one of the lowest rates of victimization in Latin America (Dammert and Malone, 2006), although, together with Brazil, it had the highest rates of imprisonment in the region (Müller, 2012). Moreover, while other countries experienced economic crises, such as Argentina and Brazil for example, Chile was an unusual case given its economic success. In fact, Chile has been described as having an outstanding growth all over the 1990s (Weyland, 1999; Silva, 2002; Schmidt-Hebbel, 2006; Borzutsky, 2017). This is also interesting because Cheliotis and Xenakis (2016) highlight the role of economic success in the perceived consolidation of post authoritarian democratic regimes. But if that was the case in Chile, does it mean the country has followed a different trend to the one described for the Latin American region? Yet, as shown in the previous chapter, national studies in juvenile justice highlight the presence of a preference for punitive approaches as well (Cillero and Espejo, 2008; Berríos, 2011; Werth, 2013).

At the same time, juvenile justice is a particularly important area of change. For example, most research focuses on imprisonment rates. However, the resulting imprisonment is a consequence of broader criminalizing, judging and sentencing processes that are relevant to be studied. So far, even research that take processes into consideration, only refer to the policies that succeeded and prevailed, instead of considering in their analysis all the conflicting ideas and what was left behind (Garland, 2004). Moreover, the juvenile justice system, as mentioned in the previous chapter, is a more pervasive civic institution that talks about building a society and the future they aspire. Thus, it can inform in greater detail about the underlying social and cultural situation. For example, juveniles and their behaviour have been described as becoming the focus of social attention and anxiety at times of change by other authors (Pearson, 1983; Muncie, 1999).

In consequence, the present research contributes with empirical research to the understanding of a new example, the broader discussion of penal transformations, and to analyse the extent to which what is known so far can help to explain the emergence of a new juvenile justice system in Chile.

### **Chapter 3: Methodology**

As outlined in the first chapter, this research sets out to explore the major reform of the juvenile justice system in Chile, learning about why and how this process came to happen. This, to be explained in more depth along the chapter, was done through documentary analysis and semi-structured interviews with key actors in the reform process. Interviewees were initially identified through the transcription of the legislative debate of the reform and then I followed a snowball technique. The data was analysed using adaptive theory and a sociological history approach. This gave me the chance to conduct a substantive explanatory empirical analysis to fulfil the main objectives of this research:

1. To explain the radical reform of the Chilean juvenile justice system in the mid-2000s,
2. To analyse to what extent research and theory of penal transformation can help to explain the drastic change in a context which is different to those where it is usually applied.
3. To contribute to the theoretical discussion of penal transformation with empirical research.

The purpose of this chapter is to present the reasoning behind the methods selected and how they developed throughout the research and into the analysis, explaining how I generated and gathered my data, the problems encountered, the limits and scope of this research. As I will show, undertaking the research highlighted the significance of policy networks and family connections within Chilean political life. Just as the power dynamics identified by my research in the transition from dictatorship to democracy highlight the importance of clientelism and paternalism, so too my capacity as a researcher to access interviewees and key documents depended very much on my personal links to key gatekeepers.

I will start by presenting how I set the limits to my research. Then I will proceed to explain my methodological strategy, divided in documents and

interviews, including elements such as sampling and access. This will be followed by a section on ethics. The fourth section will address the analysis. Finally, I will refer to the challenges faced, and lessons learned in this process.

## **I- Setting the limits to my research**

One of the first complexities I found in the research planning stage was to identify when a process of transformation actually starts. I knew the legislation (2002-2005) was a key moment, because it is when Senators and Deputies debate the draft of the new law, make modifications and finally approve the new law to be implemented. Without this step there would be no reform. However, to focus only on those three years would be problematic. As evidenced in chapter one, the first drafts of the Adolescents' Penal Responsibility Act [LRPA] were written in the mid-1990s, and debates about the need to reform started as soon as the country ratified the UN Convention on the Rights of the Child [UNCRC] in 1990.

1990 was also key in terms of national history. As I will show in the following chapter, from 1973 until 1989 Chile was under a dictatorial regime where juvenile justice was not a focus of concern. In fact, the focus was on the internal enemy, which had been defined by the regime as the communist and radical left thinkers (Chaparro and Cumplido, 1982; Constable and Valenzuela, 1993; Rettig Report, 1993; Cavallo, Salazar and Sepúlveda, 2008). However, as I will evidence on chapter five, once democracy returned youth offending and juvenile justice came to the forefront as an outward manifestation of the concerns of citizens after two radical changes in the political order and all the social and cultural alterations they implied.

Therefore, it became important to understand why a topic that had not been a concern for the 17 years of authoritarian regime suddenly became so relevant, and why the ratification of the UNCRC became key in starting a

slow but definite process to radically reform juvenile justice in Chile. In consequence I needed to go back to trace the origin of this pivotal moment, trying to understand the political, social and historical origins. Thus, the moment I chose as starting point for this research, and to understand the underlying national context, was the beginning of Pinochet's authoritarian regime in 1973, which will be addressed in chapter four.

Another important issue to solve was to identify when transformation processes end. Officially the law was published in 2005, but it was not implemented until 2007 and in those years, changes were still made. Moreover, justice institutions are not static not permanent either, they are constantly subjected to new processes of adaptation, modification, and changing practices (Jones and Newburn, 2004), thus they continue to evolve during and after implementation. Nevertheless, as the purpose of this research is to track the origins and developments of the new system as set out in the LRPA (the radical change in ethos, institutions, procedure, and definition of young people in trouble with the law), I decided the implementation in 2007 was a suitable end point of my research. The decision was also made so I had a set range of years to focus, given the implementation of the LRPA was a clear moment identifiable in time.

At the same time, it is important to keep in mind that even though I was able to set logical starting and closing points for this penal transformation, there is not one clear ordered series of steps, but many events and people who collided in a chain and a parallel of situations with many gaps in it. I focused on the 17 years of the dictatorship to understand the national context. While in the following 17 years of democracy my attention was on the context but also in the events and gaps that could help me discover what shaped the direction the juvenile justice reform followed.

## II- Methodological strategy

This research attempts to explain why and how the juvenile justice reform in Chile came to happen. This involves understanding the logic behind the reform and the elements shaping and constraining the decisions being taken in each stage of the process. Therefore, I required strategies that could, first of all, help me generate explanatory data to answer my questions, and second, could help me grasp the whole process and its complexities. For example, I required to access the characteristics of the national context before and during the reform, and to be able to understand the role of the actors involved in a process that lasted over a decade. In consequence, I needed a method that could grant me flexibility, reflexivity, depth, nuance and richness. This would allow me to identify key themes and pursue new ones that could emerge at different stages of the research, but also access the hidden underlying connections between the national context of the 1970s-2000s Chile and the juvenile justice system. Hence, I chose a qualitative approach as understood by Guest, Namey and Mitchell (2013), as a method that is '*employed to answer the whys and hows of human behavior, opinion, and experience*' (p. 2).

Flexibility proved to be an essential starting point, as the selection of methods to research this penal transformation was on itself a challenging process. This, because as I will show in different sections of this thesis, preliminary online research evidenced that in Chile there was very little research, no systematic data collection, and reduced access to what little existed regarding the situation of youth offending and juvenile justice. Which led me to another problem: where do I start? Where can I find some information regarding the juvenile justice reform in Chile or the national context at the time?



A key document at that stage was the 'Historia de la ley 20,084'<sup>1</sup> [the 'History of the law', document made by the Chilean Congress that contains the transcription of the debates, discussions and drafts of the projects over the legislative stage. It is common practice to do this with all laws published]. Another key document was the 'Historia de la ley 20,191', the history of a law to reform the LRPA published in 2007, before the new Juvenile Justice System was put into practice, and thus meaningfully altering its implementation.

The 'Historias de la ley' mentioned some sources used as a reference in the discussion, such as reports and studies. Moreover, as they are the transcription of the legislative debate, they provided me the names of the members of the Constitution, Legislation and Justice Commissions of the Congress<sup>2</sup> in charge of the LRPA draft; the representatives of other state institutions involved in the discussion; invited actors; and other centres and NGOs with active participation. Furthermore, politicians also made reference to some documents and statistics.

Therefore, I considered the best approach was to start from the 'Historias de la ley' and deepen from there. In consequence, I decided to find the actors mentioned in the legislative process in the different roles and ask them about their experiences, their struggles and ideas, how they came to be involved in the process of change, and the role they had. This would give me access to at least what had happened, what had changed (institutions? Laws? Views and understanding of youth offending?), and some insight about who and what was being taken into account. This because even though the 'Historias de la ley' had the transcription of the political debates, the underlying reasons

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1 The Law 20,084 is the Adolescents' Penal Responsibility Act. That is its official number and it is officially known by both name and/or number.

2 The Chilean Congress is divided in two Chambers, Deputies and Senators. Each Chamber is also divided in Commissions. The Commissions are formed by a reduced number of Deputies or Senators -depending the Chamber-, and they oversee all the laws that fall into their category. The Commissions are in charge of presenting the law to the rest of the Chamber and work in the modifications, which are then voted by the whole Chamber. If the law project is approved in the Chamber where it started, it will go to the other Chamber, where the same Commission will analyse, present and modify the law before returning it to the original Chamber.

for their arguments and decisions were not stated. I had only access to their official speeches at the time. Moreover, the participation of other experts was mentioned but not detailed. Thus, it was not clear the amount of influence they had in the reform process or if they were just an informed audience.

In order to explore the level of participation these key actors had in the reform process, their views of it, to be able to adapt to varied levels of involvement and be able to develop my own understanding of why and how, I opted for semi-structured interviews as a research method (Guest, Namey and Mitchell, 2013; Della Porta, 2014). This is a method that allowed me to explore participant's experiences in the reform process, and to access to their underlying opinions, attitudes and beliefs over the different stages of the development of the new juvenile justice. It is a format that let me explore in detail issues that were important to individual participants, while still connected to history, because those who participated in the reform were witnesses of a specific event at a specific time (Guest, Namey and Mitchell, 2013). Moreover, this method allowed me to adapt to the particular conditions the participants in the reform were facing in their present lives. After all, some of the names found in the 'Historias de la ley' were from older people (over 80 years of age). In fact, a couple were dead. In consequence, I needed to be prepared for people that could be in delicate or vulnerable conditions.

At the same time the two 'Historias de la ley', despite being a limited resource because they only referred to the legislative process, were documents worth analysing as well. I was researching a process that happened more than 10 years ago, which made highly likely the memories participants have will not be precise, especially regarding the role, words or actions of other actors in the reform process. Therefore, by bringing together data from the interviews and documentary analysis I was able to triangulate the information (Rubin and Ruben, 2005). Moreover, the transcriptions of the debates provided me a first approach of the juvenile justice reform and the topics being discussed (or abandoned). Thus, they could help me to complete the picture of what happened in those years, and a different perspective on the same research point, including for example opinions being

portrayed, the main ideas and sources of knowledge. Besides, I was not certain I could access politicians for my interviews, and the 'Historias de la ley' were a way of having their official public statements on the matter at the time. Hence, I added documentary analysis.

Moreover, the participants in the reform process would not necessarily be good informants about the socio-political and cultural changes that took place in Chile during the authoritarian regime and the democratization period, or they could refer to many other contextual events I may ignore. Hence, in order to clarify the national context and landscape preceding and surrounding the reform process and taking into consideration that the authoritarian regime refers to events that happened in the 1970s, I decided to conduct some historical sociological analysis based on documents as well.

Here I encountered the first main difficulty of doing research from a distant location: all those people and most of the documents (too old and not digitalised) were in Chile. Thus, I decided to conduct five months fieldwork (from the 14<sup>th</sup> of January until the 11<sup>th</sup> of June of 2017) to conduct interviews and use the archives.

Before my fieldwork I started contacting possible interviewees. I also tried to access all documents I could find online. Once in Chile, I spent my fieldwork trying to establish contact with more possible interviewees and went to different libraries to access the documents I needed. The processes of sample selection, access and data generation and gathering will be presented now in the following subsections according to documents and interviews.

## 1. Documents

### *a) Sample selection*

In this research, I had two main elements I needed to grasp. Firstly, the national historical, social, political, and legal context of Chile during the authoritarian regime and in the 17 years of democracy before the

implementation of the new juvenile justice system. Secondly, the reform process itself, triangulating the information generated in the interviews.

For the second task the 'Historias de la ley' were key. As previously mentioned, they were a transcription of the legislative debates in the Congress and the modifications of each draft after legislation started. Moreover, the 'Historias de la ley' mentioned some reports or studies. Politicians also used data to validate their arguments. However, most times Deputies and Senators would not reference the source they were quoting, and they would often contradict each other. In consequence, I decided to review all documents directly mentioned during the legislation. Finally, in order to make the search more effective, I would check the sources used by documents that were highlighted by the interviewees as the most influential for them during the reform. Towards the end of the process, the sources and documents used started to constantly repeat. Thus, I also searched those specifically.

Understanding there may be more key documents I was not aware they existed. I also conducted online research of the official websites of all organizations mentioned in the 'Historia de la ley' to have participated in the reform process (for example as audience, giving statements, conducting studies). There I looked for or requested –depending on their availability- the documents they had in juvenile justice. I also looked for books dedicated to Chilean juvenile justice, which involved the revision of the catalogues of national libraries that hold legislative reports and information. This libraries were: The National Congress Library (two headquarters, one in Santiago and one in Valparaiso); the Public Defendant Library; the Comptroller Library; the Supreme Court Library; the National Library; the Prosecution Online resources and Library; the National Service of Minors Online resources and Library; the Ministry of Justice archives; the Police (armed and civil) and the Gendarmerie official websites for their Online Journals, reports and statistics. Using this method, I was able to retrieve some documents and reports online. This involved mostly downloading files of websites such as [www.sename.cl](http://www.sename.cl); [www.unicef.cl](http://www.unicef.cl); [www.fiscalia.cl](http://www.fiscalia.cl); [www.bcn.cl](http://www.bcn.cl); [www.dpp.cl](http://www.dpp.cl); among others.

At the same time, in order to develop an understanding about the historical, social, cultural and legal background of Chile before and at the time of the juvenile justice reform. I decided to review all national reports, surveys and official information regarding the national situation over the authoritarian regime and in the first 17 years of democracy. At the same time, and in order to get a sense of the political landscape and the prevalence of youth offending and juvenile justice in public discourse I decided to include the government programmes of the candidates to presidency over the period and their annual speeches.

The documents were chosen based on their official institutional or academic role, accessibility and their public nature, understanding them as informative about the construction of particular social realities (May, 2001), and also as the knowledge base experts and politicians of the country had at the time.

#### *b) Access*

The first difficulty I faced after defining what documents I wanted to work with was the absence, in some websites, of any information older than ten years. As I started my research in 2015, this left out everything that happened before 2005, the year the reform was approved. Therefore, I contacted via e-mail public institutions such as the Ministry of Justice and The National Service of Minors, asking them for internal documents and reports. This was a slow process as most time the institutions would not reply. In consequence I had to request information through the Transparency Law. This Law commands most public governmental institutions to provide any information requested. It requires to fill a form and wait up to 40 days.

Initially I only received two documents from the Ministry of Justice. However, this did not match the information I had found in the 'Historias de la ley' and the online documents I had already managed to access. In consequence, I had to make a second request through the Transparency Law which provided me with 11 more documents. I was not successful in obtaining any more from the Ministry of Justice.

Regarding the National Service of Minors [Servicio Nacional de Menores, SENAME], they sent me 18 documents and the contact details of the people in charge of their archives. I directly contacted them and received 2 more documents and statistic data. The communication with them was fluid and helpful. Nevertheless, they were not able to provide me with any more of the documents I was trying to obtain. This was problematic because it meant that I could not gain access to all the original sources I wanted.

In fact, those two public institutions did not have a catalogue, making it hard to find out what else might be there that could help in my research. For example, the first pre-projects of the LRPA were not available. Even the people who wrote them had no copy of them now. The only existing draft was that of 1998 (the 8<sup>th</sup> version), the last one before it was presented in 2002 to the parliament.

Therefore, access to documents was more complex than expected. For example, sometimes documents that appeared in the catalogues could not be found once in the library, or some of them were stored in a different location and I had to request them with an exact number of days of anticipation. Some libraries had very restrictive timetables, and in occasions they would be closed even though officially they had to be open. One of them was in a different city and only opened for a few hours twice a week. They had no technology to scan the documents in the place, no computers to review the catalogue once being in the library, and copies, if they had the option, were expensive. What is more, as an external researcher from a non-Chilean university, I could not take books home with me and could not review more than three books at the time. I could not find any reports or institutional information during the dictatorship. Even the government plans of candidates for presidency in the 1990s and mid-2000s and the presidential annual speeches were hard to find. Sometimes, one year would be missing, or the projects of less famous candidates would not be available.

I also directly contacted NGOs and think tanks asking them for documents that were mentioned in their internal libraries but not available online.

Sometimes I got a reply sending me the files. Sometimes I was told they did not have the book anymore. In occasions I received no answer at all.

Thus, it is worth mentioning that I could not find all the sources I wanted. There were unexpected complications to find and access documentary data. There were a lot of lost documents, and the lack of catalogues evidences some disorganization and lack of clarity regarding what they had in the archives of some State and private institutions (this happened with media archives as well, as I will comment in a later section). There was also a lack of policies and practices of digitalization, making matters more complicated. This could be connected to the practices of the authoritarian regime, where the military government did not want records of their actions nor citizens informed, as it will be seen in more depth in chapter four. This is a practice that, even though toned down, continued into democratic times. Perhaps this could also be understood as disorganization instead of an institutional culture against accountability. But under any circumstance it talks about lack of access to information and faulty practices of conservation of national past knowledge, which makes harder to research national history and processes.

However, when the sources had been used in other works, I could still have a notion of them. For example, when the original statistic report is missing, but I could find other documents referencing the data and results. Although this implies the data had been already selected and analysed with a purpose by another author. Therefore it involved the extra step of using different sources that reference that set of data to develop my own understanding of it, and also the consideration of the characteristics of the document where it was quoted, such as the institution to which the author belonged, the purpose of the article or report, political motivations underneath, among others.

This implies taking into consideration the political and social context in which the data was produced (Tracy, 2010; Finfgeld-Connett, 2014). This is key as some of the external foundations and institutions that generated studies for the juvenile justice reform are directly linked to some political sectors (for example Libertad y Desarrollo [freedom and development] is linked to the

conservative right-wing of the country that was strongly connected to the authoritarian government). Moreover, as it will be evidenced in the following chapter, Chile was under strong political polarization at some moments in time. This makes it relevant to be aware of the situation and be sceptical of the information contained in the documents retrieved, especially regarding the times of the authoritarian regime, as they could have been written by supporters or detractors of the dictatorship. Moments close to presidential elections were also tricky, as squabbles between the two major political coalitions in the country increased.

In consequence, I needed to make sure I could identify the moment in time the documents were written and the political affiliations of the authors, not taking them as a mere description of facts but as a possible political instrument as well. This also meant I tried to confirm with more than one source of different authors and hopefully different political viewpoints the data being referenced. Especially because there were a few contradictions between the results and conclusions of different authors regarding the amount and characteristics of youth offending, for example. Thus, if I could not be convinced of the source of the data, if it really had existed or it was a generalization or part of political rhetoric, or the methodology was dubious I preferred not to use it, or to clearly point out the information as coming from that specific source. For example, when politicians used figures to strengthen their arguments, I would add it as a quote, highlighting there was not further evidence.

### *c) Data gathering*

In terms of gathering documents, the main step was to go to the libraries for the reports and articles found in their online data base. It implied accessing around 40 journals, more than 40 books, around 20 reports, and 10 dissertations. However, given the huge amount of material that I needed to cover in my five months of fieldwork; in order to have access to the documents at any stage of my research in case I needed to re-read or to quote something; and due to the highly restrictive availability of documents



described in the previous subsection. I chose not to read the documents in the library, but to do a quick review of their content and then scanned them with a portable scanner, storing them in an external hard drive (the list of scanned and saved documents can be seen in Annex 5).

In general terms, the documents gave me access to a broad overview of the national context at the time, together with opinions and developments of the Juvenile justice reform and key topics associated to it, for example regarding the approach towards the suggestions of the UNCRC. Furthermore, the 'Historia de la Ley 20,084' and the 'Historia de la Ley 20,191', besides the statements of the opinions of those who participated in the legislative discussions, provided me some broad presentations and summaries made by some experts, the votes of politicians and political parties during legislation, and the explanation and arguments sustaining their decisions. For example, this provided me their understanding of why young people present offending behaviour or what they attributed to be increasing public demands of a reform.

Finally, the annual presidential speeches and the government programmes of the main candidates for the presidential elections of 1999 and 2005, all documents found online, helped me to gain insight on the political landscape regarding juvenile justice. It allowed me to evidence the growing focus over the topic and the direction public debate was following, based on the measures suggested and the support of the general population.

## 2. Interviews

### *a) Sampling*

As previously mentioned, the 'Historias de la ley' provided me with a series of names of participants in the reform process, the institutions they belonged and the extent of their presence in the legislative debates. Therefore, I looked at the different involvement people had. For example, regarding how many

times their names were repeated, in which parts of the process they participated, their level of participation (just voting the project, or actually making changes to it) and leadership (how influential they seemed to be in relation to others, representing institutions with more power over the decision, being in a higher hierarchical and/or technical position, or shaping the opinion of many participants).

I used this to identify key actors because the 'Historias de la ley' name more than 150 people. Moreover, even though the law projects are voted on by all 120 Deputies and 38 Senators of the Congress, it is only the members of the Commission of Constitution, Legislation and Justice who can write meaningful suggestions and make actual changes to the project. That means 13 members in the Deputies' Chamber and five in the Senators' Chamber. There were also representatives of the Prosecution, the Public Defendant, SENAME, NGOs that work in the field, workers of the Ministry of Justice and some professors who participated in the draft writing of the law or gave talks in the Congress about youth offending and juvenile justice.

In this preliminary analysis I identified 34 people as central and those who were my priority to interview. They were all people that had a shaping role in the juvenile justice reform (Richards, 1996). In consequence, I used purposive sampling, choosing the participants in this research based on their involvement in the reform process (Layder, 1998; Guest, Namey and Mitchell, 2013).

The first thing that called my attention at this stage was the variety of actors and institutions in the group of the 34 identified key participants. These can be divided in two main groups: politicians (members of the Congress or the Executive Power, most of whom are defined in popular elections); and professionals or experts (people who were involved because of their roles as advisors or representing institutions such as the Prosecution or think tanks and foundations). However, as the legislative decisions are in hands of Deputies and Senators, I wondered about the extent of participation other actors had. Were they included just to be aware of their future roles? Or were

they actively involved in the discussion? Had they the power to make actual changes? Or to influence politicians to make those changes?

*b) Interview design*

Based on my research objectives and the process I wanted to understand better, I identified the main themes to cover in the interviews and brainstormed different questions that could help me to address them (Guest, Namey and Mitchell, 2013). These related to interviewees' participation in the reform, the limitations and influence of their actions, the underlying reasoning for their decision and suggestions, and all elements that could indicate me why the new juvenile justice evolved in the way it did since drafting to the final product being implemented.

However, I did not have a set of fixed pre-planned questions that all interviewees had to answer. This, because their positions and the extent of their participation was different for all. What I did was starting by asking about their participation in the reform process and continuing from there until I had addressed all the main themes. This also gave me the flexibility to deepen in any new theme that could arise from interviewees responses. There was also no opportunity to run a pilot on the interviews, but they were discussed with my supervisors, and the key themes were reviewed and adjusted after each interview to ensure the instrument worked effectively.

*c) Access*

This proved to be a demanding and sometimes frustrating task. I had no knowledge of where the participants I had identified as key informants for my research were now, more than 10 years after their participation in the juvenile justice reform. Therefore, the first action was to look for them following their digital presence. In the process I discovered most of those professionally involved had changed jobs not only after the reform was implemented, but also since the law drafting process in the mid-1990s. For example, one of the interviewees worked in four institutions actively involved in juvenile justice between 1990 and 2007.

Another thing that called my attention is that most of those professionally involved are now in academia. This could relate to the fact that many positions have an established period, for example the director of The National Service of Minors [Servicio Nacional de Menores, SENAME] changes every four years. At the same time, many of the actors that had important positions representing institutions such as the Prosecutor or the Public Defendant were already at the top position they could reach in that institution at the time of the discussion.

Arguably, their switch to academia may be because they were considered to be experts as a result of their professional background and experience in high positions in State institutions; legitimising their social status as experts while allowing them to continue their career. Besides, their names become visible, making them part of a qualified small group which grants them better access to new opportunities and projects within the same circle, and academia could offer easier mobility, increased possibilities of collaborative work, and institutional support.

In contrast, most politicians had remained in politics. That means they were active politicians who had been re-elected at least once since the legislation took place (2002-2007). Although is important to point out that at least two active members of the legislative debate in the Congress had disappeared from any visible participation in political or social organizations due to political scandals, and I was unable to find them<sup>3</sup>. It is also relevant to note that Ministers are non-elected politicians who can be changed at any moment of the presidential period, which leads to the replacement of central internal positions as well. Likewise, they usually change with each new president. In consequence, only one of them continued in a political position inside the Executive at the time of my fieldwork.

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<sup>3</sup> For example, María Guzmán, Deputy for National Renovation [Renovación Nacional, RN, a right-wing political party] was involved in a political scandal after her public comments on the Spiniak case, the legal case against a businessman for child pornography and prostitution, where three Senators were identified though eventually found innocent as implicated. RN did not renew María Guzmán candidacy after that and since then she abandoned her political life.

In order to contact all these people, I designed a presentation letter. I sent it to the public e-mails that I had been able to find. Most of them were institutional e-mails associated with their current workplace, although some of them had private websites with the required information. I used this method to contact them first because I was still in Edinburgh. However, I only had a few replies and managed to coordinate only a couple of interviews using this approach.

What worked substantially better was to contact interviewees through gatekeepers. Especially because they were well connected to people I already knew. For example, I discovered one of my distant relatives worked in one of the organisations that attended the LRPA's legislative sessions, so I asked her about it. She knew some of the people I wanted to contact and allowed me to use her name as a reference. Likewise, one of my professors during my studies in Chile directly participated as an expert inside the Ministry of Justice. I contacted him and even though I was never his student directly. He remembered me and agreed to participate. He also directed me to some other people that was on my list.

Then, when I was already in Chile, the professor introduced me to a high-ranking manager of an NGO that actively participated in the juvenile justice reform, and he was key in granting me access to other interviewees. After I talked to the NGO manager and explained about my research, he sent my presentation letter to many of the people on my list and some others who were now considered experts in the topic. His help may have been related to the fact that I worked in that institution in the past (although never directly with him because he was the manager of my boss), that the professor of my Chilean university mediated my introduction to him, that he considered the topic and my interview interesting and worth sharing, and/or that he also researches and understands how important and at the same time hard it can be.

Under any circumstance, my networks proved to be essential, even though I just realised I had them once I was working on my research. These networks

gave me an initial access and granted the willingness to most of those contacted through a gatekeeper to participate. Without them, it is very likely I would have not progressed further with my interviews. Interestingly, this resonates with the data generated. Networks are key in Chile for both legal and policy making. I quickly discovered that most of those who are now in academia belonged to the group of experts during the transformation process, and I was moving inside that small specific network. Another thing that caught my attention was the background that connected them. They all knew each other very well, many of them had worked together in the past (many times before even the discussion of the Adolescents' Penal Responsibility Act [LRPA] started), and some of them had even studied together. In fact, a few of them now work in the same university as academics together. I traced that network, how they had come to be involved in the transformation of the juvenile justice, and realised many times the involvement of some people was because they were called or recommended by other people already in the process.

This was probably influenced by the fact that the amount of people in position to contribute to the reform were a small group. There were few experts in juvenile justice, and not much knowledge about the needs of this population or how to carry out such a big change. It was a small world, so it was easy to know each other. The same people who drafted the reform were then called as experts; people who had worked together and shared views on juvenile justice were later in different jobs that required their involvement as advisors, organising and presenting information to people taking the decisions.

Moreover, the group of politicians involved was also small at the end, 13 members in the Deputies' and five in the Senator's chambers, and finally the mixed commission was formed with Deputies and Senators from that same group.

Therefore, with this I discovered how important networks are, at least in big political processes and reforms, in the Chilean context. In fact, 'who you know' is also important for researchers. If I had not contacted a few insiders at the very beginning of my research (some on my own, some through the

discovery of the connection of my distant relative and my university professor), it is likely the number of interviews would have been smaller. Moreover, 'who you are' is another issue to keep in mind. Because my own situation as an outsider/insider was probably also taken into account when deciding to help in my research and to consider it worthy. This may have something to do with my interviewees being experts and thus highly busy people. The relevance of networks, their implications and what they meant for this reform process will be addressed in more detail in chapter six.

Under any circumstance, once my connection with a small group of people had been granted through my gatekeepers, I could continue using a snowball technique to identify other key participants in the juvenile justice reform (Richards, 1996; Guest, Namey, Mitchell, 2013). At the end of each interview, I asked each participant if they could identify any actor I should consider in my research, and if they had the means to contact them or I could use their names as a reference. This confirmed that my idea of who was key was more or less right when after a few interviews the names were constantly repeated, and few new ones would appear. Most times the participants in this research re-directed me to my gatekeepers to find the contact information, but they allowed me to use their names if needed.

In this process the role of the key actors I had identified was clarified, some people who appeared as relevant in the 'Historia de la ley' were not as central as some others, especially politicians. Also, six more people were added to the original 34. They were identified by almost all interviewees as experts with a very meaningful involvement in the reform. As a result, I had a new list of 40 people. From that group, those identified as most important in terms of determining the rules of the discussion, guiding the transformation process (although not necessarily in the same direction) and shaping conflicts by the majority of interviewees were those in charge of writing the first project that was presented to the Deputies chamber, as they created the base for the discussion; the Ministers of Justice who represented the Executive Power; and the Senate, that had the legislative power to make the final decisions with the project. Of those 40 actors I was able to contact 33,

and effectively interview 18. The difference is divided between three who directly explained they were not available, and those who never replied or gave an initial positive response but never specified availability.

Once I was in Chile other means used to try to contact participants, besides e-mail and snowballing, were delivering a hard-copy letter when there was a public institutional address; phoning when there was a public phone number associated; and contacting institutions and/or political parties where they participated, informing them who I was trying to contact and why, requesting personal e-mails or asking them to re-send the invitation. However, these techniques were not as effective as being directed by someone from the same network.

Therefore, at the end, snowballing was the most effective way of access when it came to interviews. Whenever the interviewee was contacted through another participant of my research the reply was fast and most times led to the effective setting of a date and time (although there were a couple of exceptions when even mediated contact led nowhere). In those cases, my status as a researcher had been considered validated by the approval of someone who the interviewee considered close. The positive aspect is that it helped me to make new contacts, accomplishing a key advance in my research. The counterpart is that most of the people I was able to access were close with the others, they belonged to the same group of friends/co-workers and it worried me they would have a very similar understanding of the events I was researching instead of representing varied positions and arguments in the discussion, leading to only part of the story. Moreover, a part of the story that would appear strong and solid because it was represented by all the people I accessed through the same network. Therefore, this could bias my understanding of the reform process.

My concern was increased by the almost non-existent contact between the experts and civil society with politicians. I noticed this because my gatekeepers directed me towards experts, but they told me they did not have the access to politicians. Then, when talking to other interviewees, they



would mention some politicians as key actors, but when asked they would state they did not have a way of contacting them or would direct me to the official information in the Congress website if they continued as Deputies and Senators.

On the contrary, if they recommended that I to talk to other experts, they could at least point me to my gatekeeper to establish direct connection with them or would provide me their current workplace so I could find them.

Therefore, politicians and experts may have worked around the same topic and even in the same meetings in the past, experts may keep track of what politicians are doing, but they do not keep contact. In consequence, I could only resort to communication via institutional means, which as I said before were not effective.

Moreover, as the access to public institutions such as the Congress or the Ministries is highly controlled and restricted for regular citizens I was only capable of reaching active politicians directly four times, all of them thanks to my networks that provided me their official personal phone or direct e-mail, instead of going through previous barriers -where the main reply was a standard dismissal of any interest in participation on any kind of students' research due to their highly compact schedules, mostly obtained through telephone contact with their secretaries. As my networks in this regard were not influential, I received direct dismissals or a broad recognition of interest that never materialised. As a result, I had two very contrasting set of replies. Almost all those key actors who now work in academia, despite their previous position, replied fairly quickly and agreed to participate (there were only two exceptions). On the contrary, all those working in politics at the present time did not replied or rejected participation.

Given this scenario, I was not able to access active politicians, whether or not their role had changed since the transformation of the juvenile justice system. As a result, my data comes mainly from the group of those who after working in different positions during this process (public defendant, prosecutor, advisor, among others) now were in academia. As previously commented, it

meant I only had a partial perspective about the reform process, missing politicians' opinions and experience. Therefore, I feel like part of the story is missing, the politicians' side. Even though, the vision of them as a counterpart is mostly influenced by the narratives of my interviewees, who presented them (mostly Senators and some Ministers of Justice) as the powerful villains, while they were overpowered heroes. However, this was not to the point where they could not recognise any mistakes and present themselves in only good light. They all admitted failure in one or another element, referring how they could have done more or at least different.

In consequence, the only way of having some access to the perspective of Senators, Deputies and Ministers of Justice was through their transcribed opinions in the 'Historias de la ley'. This implies I could get a sense of their opinions and arguments back then, but not much about the underlying reasons, unless they openly stated them. Moreover, all the elements shaping their decisions at the time could be only inferred after analysis. This could still be accessed through all the documents I gathered and reviewed, but I lost the richness of their own perspectives and understandings of their experience and how they could reflect nowadays on the process. Albeit it is important to keep in mind as well that being politicians, and being 2017 the year of my fieldwork, a year of presidential election, politicians could have taken the chance to make political statements that apply to the present or to reinforce their stance and the one of their parties, instead of actually delving into their past actions.

Finally, my interviewees can be broadly described the following way: three people who actively participated writing the law draft, in the legislative discussion, conducted research in juvenile justice, and/or advised other actors; four who worked for the Executive Power; three belonged to NGOs/foundations that had an active role in the debate and transition; two ex-politicians; and representatives of governmental institutions such as the Prosecution, the Public Defendant and from SENAME. This involved a varied group of high rank functionaries from institutions associated with youth crime

law enactment and policy writing. Their general information and way they will be identified in this research can be seen in the following chart:

### **List of Interviewees**

IDENTIFICATION	PROFILE
<b>A</b>	Member of the legal division of the Ministry of Justice during the legislative process of the LRPA.
<b>B</b>	Member of the legal division of the Ministry of Justice during the legislative process of the LRPA.
<b>C</b>	Member of the Institute of youth during the legislative process of the LRPA.
<b>D</b>	Deputy of the Constitution, Legislation and Justice Commission. Participated in the legislative discussion regarding the implementation date of the LRPA.
<b>E</b>	Project coordinator of NGO that works directly with SENAME providing intervention programmes for young people.
<b>F</b>	Member of the team writing the first projects of the LRPA.
<b>G</b>	Legal assistant of the Ministry of Justice during the legislative process of the LRPA. Leader of the minors' department of the Ministry of Justice.
<b>H</b>	Current academic expert on the topic of juvenile justice in Chile.
<b>I</b>	Participated writing the first projects, lawyer of SENAME at the time.
<b>J</b>	Member of the minors' department of the Ministry of Justice during the legislative process of the LRPA, representor of the public defendant in the same process.
<b>K</b>	Expert in the juvenile justice reform in Costa Rica, which was used as a model by the Chilean juvenile justice reform. Presented the Costa Rican reform to Chilean authorities.
<b>L</b>	Researcher and representative of a highly influential think tank in the legislative process of the LRPA. Member of the expert commission to assess the conditions for implementation of the LRPA.
<b>M</b>	UNICEF consultant. Member of the writing team of the first projects of the LRPA.

<b>N</b>	Member of a research centre that dedicates to offending and security topics.
<b>O</b>	Member of a foundation that worked with young people in trouble. Oversaw the programmes that deal with substance abuse of the time and participated in the assessing commission of the implementation of the law.
<b>P</b>	Member of the Department of juvenile justice in SENAME at the time of the legislative process.
<b>Q</b>	Deputy from the Family Commission that worked in topics of childhood and adolescence, Member of CONACE [The National Council for Narcotics Control]. Was in charge of the Juvenile Responsibility Department of SENAME.
<b>R</b>	Representative of the Public Ministry (the Prosecution) during the legislative process of the LRPA.

#### *d) Data generation*

Most of the interviews were conducted in the working place of the interviewees, with the exception of one meeting in a small café and one in the house of my older interviewee (80 years old, thus I opted to adapt to this person needs and comfort). There were no unexpected events during the interviews excepting some interruptions due to phone calls the participants received, although they would dismiss them and continue with a small reminder of their last words before it happened. The time used in each interview was between one and two hours and it involved the presentation of the informed consent form (Annex 2), where I explained my intention to voice record the interviews for example, and some preliminary conversation (usually questions about my project and studies). The length of the interview and line of questioning varied depending on the involvement each person had with Juvenile Justice and the specific process.

The dynamic during the interview also proved to be very interesting. The interviewees were open about their personal experience. They were willing to tell their own stories and provide information about the process. Most of them needed a very small number of questions and probes in order to keep talking

about the reform. They also provided their own analysis of what they believed had driven the juvenile justice reforms in one or another direction, and referenced some of their publications or public participation, all in a way that made me feel they have done this many times, some of them also mentioned being informants in research about the LRPA before.

However, almost all of them requested extra information about my background, establishing my connection with the person who had linked me to them. At the beginning of the interview I heard many times things like '*I imagine you have managed to look at the statistical data*'. This acted as both a way of testing my knowledge and also as a way of discretely emphasizing their opinion about something, implicitly stating that such opinion was almost a fact, while avoiding explicit criticism. These remarks decreased significantly as the interview progressed. I believe this relates to keeping control of a situation where their participation could be questioned and criticized, because they all judged the current state of juvenile justice as negative.

The belief they had an initial tendency to assume a leading attitude in the interview was reinforced by how they approached it. Most of them, after the first open question about their experience in Juvenile Justice, would provide me a very long answer stating not only their involvement in the field, but immediately their participation in the reform, their opinions of how the process evolved and many times their suggestions of what should be done now. After this monologue (that I allowed so they could relax and I could start deepening the information from what they had already said), many finished saying: '*and that's it*', as if implying 'that's all'. Despite this, when I continued asking about more of their experience, they continued the open attitude and started making more reference to the participation of other actors, their opinion on their interactions, and unveiling the dynamics between the people who participated and the characteristics of the reform.

There was only one interviewee who was evidently nervous and defensive at the beginning, stating he did not remember much so he could not help; with him I had to be more directive with my questions. This may be explained

because he was contacted directly, with no reference to other participants; he was not involved in academia and he had worked closely advising politicians of the time. Nevertheless, I approached him by asking more about his personal experience and opinion, not making reference to other actors unless he had made the connection first. As a result he relaxed, his answers became longer, and my intervention decreased. At the end of each interview all participants offered to help with everything they could. This makes me think they felt comfortable with being interviewed and also considered the research was worthy of sharing with others who could help.

Regarding participants' accounts, they followed a similar structure. They started describing the career path that led them to work on juvenile justice to then deepen in their participation in the reform process. In all cases the legislative process had a central part in their description of the events and personal experience. This can be explained by the way I started the interviews, asking about their participation in the reform and juvenile justice topics. However, in many occasions I was left with the feeling of a pre-arranged structure to tell the story or an agreed version of what had happened. This mostly happened in the cases that, as I previously mentioned, they had been informants before, and also in those of people who had worked together writing reports or papers about the topic. This suggests to me that interviewees had developed an 'official' discourse about how the reform happened, and the role played by different actors. Perhaps as a result of consistent dialogue between people with similar opinions. I do not know when this consensus emerged, but it is another reflection of the small and tight networks they belonged to and their relevance. Many of them had worked together at the time of the reform, some even worked together at the time of the interviews as well.

Moreover, participants described the reform as something from their past, an event in their careers to which they are no longer involved. Not in the sense they stopped working in juvenile justice, though some of them did. But in terms of now working under the rules of the new system with the good and bad instead of around juvenile justice policy or trying to change how it works.

They mostly took a detached attitude, not letting strong emotions appear, nor in actions, tone of voice, or open disqualification. Even when most of them attributed the responsibility for the negative aspects of the LRPA to politicians, some added comment to neutralise any aggressive implication that could be read from this (*'It is not a criticism of any person in that position, it is an institutional thing'* (M., 2017)). Other ways of making emotional distance were generalisations, changing from first to third person at key moments in their accounts, placing strong emphasis on their happiness with the change despite how much they complained about almost every aspect of it, giving an institutional discourse when talking about conflicts, and also referring to the topic in terms of actions instead of personal opinions or emotions. For example:

*'All the richness of the discussion in the Deputies' Chamber, which was very good, a very high level, and in terms of concepts in the whole juvenile system, everything was so well installed in the first version of the project. Then we have a very political year, influenced by the elections and the issue of young people and youth crime are always seen as a threat, a black monster let's say. But in the Senate the project is dismantled, and it transforms in the final product'* (L., 2017).

Thus, it was possible to see underlying conflict in how this process was for them, despite the descriptive way in which this was addressed. For example, their frustration and anger was usually addressed in terms of how they decided to stop working in the reform and take another career path, or at least take a break from it, as one interviewee commented: *'I left my consultancy there, among other things because I realised there wasn't, let's say, much interest'* (I., 2017).

The anger was mostly associated with the inability to make their voice heard in the official outcome. Experts were invited to the Congress to present and discuss about their own ideas, but these did not permeate the legislative discussion at the very end. The final decision was not theirs, and the differentiation they were trying to make from the adult system, the

specialisation they wanted to promote in juvenile justice were rejected, privileging a Juvenile Justice that was not well valued by these experts. The conflicting emotions they have towards this process is also visible in the efforts they made to highlight the positive elements the change had, especially at the end of the interviews, when most of the criticisms had been already exposed. Most times they mentioned many things they disliked and then ended adding something positive, although contradictory. For example: *'I have no doubt the law is positive, but it didn't have the institutional support according to the spirit and objectives of the law'* (D., 2017).

e) *My role as an interviewer*

Another key factor to consider in the data being generated was my situation as an insider/outsider, which probably facilitated communication with some people and made it harder with others. On the one hand, I am Chilean, I studied in the same university most of them did and then worked in juvenile justice as well. On the other hand, I am younger and even when they assumed I had the knowledge (for example adding comments like *'you know how this is/works'*), I always asked them to explain how they were understanding different situations. This generated a setting that, relying in the age and position difference, allowed me to obtain many concrete examples that founded their personal opinions.

At the same time my research is conducted in a known University of an English-speaking country. In Chile international institutions are often better valued than national institutions, the same happens with universities, and if they are from countries that speak English it is considered even better. They have reputation of being more serious and objective in terms of research. Moreover, it could imply a connection to broaden their network.

Finally, this insider/outsider situation was probably the main difference that made it possible to talk to people who work in the field but not to politicians. In order to access them I would have probably needed some political connection in each party or someone with a strong influence inside the current government, and I lacked such resources. This showed me that the



Chilean political world is quite closed, and again, who you know matters, not only in terms of getting an important job position, but also to talk to them about their work. Nevertheless, I believe it was the same lack of those resources that helped me to be seen as someone trustworthy by my interviewees, someone more neutral and willing to follow the information available from a more external perspective. Because I was not associated to any political ideologies and I am young enough to have studied and lived in a democratic Chile, doing my undergraduate studies in a recognised university. Therefore, I had some status of a 'credible researcher', someone who would not twist their words for my own benefit.

### **III- Ethics**

This research was conducted under the ethical protocols of the University of Edinburgh, it received clearance at level two. This is because it involved interviews with human subjects. The forms filled for the ethics panel can be seen in Annex 1. The people I had identified could be considered elite interviewees (Richards, 1996; Smith, 2006), given their political, professional or academic positions that granted them a high social and hierarchical status. Therefore, the process of ethical clearance implied reflecting on the possible risks and conflicts I could foresee regarding the particularities of my sample and my fieldwork and suggesting ways of handling them. No interviewee was contacted before clearance was obtained.

In the planning stage of this research the main ethical issue I could foresee was confidentiality. I identified my interviewees from a public document based on their open participation in a big national reform. Therefore, even if I avoided names and positions of informants, others could guess their participation. I addressed this by clearly stating in the informed consent that anonymity could not be fully ensured (Annex 2). Nevertheless, acknowledging this difficulty and the respect for their privacy I attempted to remove the identifying characteristics that were not relevant for the results.

For example, by changing their names for letters as presented in the list of interviewees of page 79 in this chapter. Their genders were also omitted as the presence of more male than female could facilitate their identification. Following this line, their organizational roles are only mentioned, if necessary, to illustrate a point that cannot be evidenced otherwise. Likewise, participants were asked about the way they wanted to be referred in anything produced during or after this research.

The informed consent also clarified they could withdraw from the research at any stage, which was verbally reinforced before starting the interviews. All participants signed the informed consent before proceeding. There was only one exception because he was an international expert who helped in the process but does not live in Chile. Therefore, in order to address the distance problem, I resorted to technology. We used Skype (popular, free, easy to use, only requires a good internet connection and the interviewee had it already installed in his computer). More importantly, it simulates face-to-face contact (Booth, 2008), facilitating the access to his experience beyond what a phone call or a written interview could do, even though not to the level of the other presential interviews as body language was lost (Guest, Namey and Mitchell, 2013). In this particular case, the informed consent had been previously sent by e-mail, we verbally discussed it, and both the consent and the interview were recorded in the same voice recorder the other presential interviews were. There were no quality problems in the audio and it could be transcribed just as the other interviews had been.

The interviews were voice recorded in a device previously presented and after interviewees granted their agreement. The purpose was to ensure I would have access to the data generated in something more complete than memory and paper notes, which are highly dependable on what calls my attention during the interview itself. Moreover, the recordings allowed me to go back to the interviews as many times as needed, identify changes in their tone of voice, pauses and emphasis. Besides, this strategy gave me the option of transcribing the interviews and work directly with their very own

words. Then, in order to keep the data protected I changed the data from the recorder to a password protected hard drive.

All interviewees agreed to be recorded and most of them refused confidentiality, allowing me to use their names and/or working positions at the time of the reform or at present time. However, I decided to use the strategies described at the beginning of this section to diffuse their identities in order to avoid differentiating between those who wanted anonymity and those who were not concerned about it, which could answer to a number of reasons. Firstly, most of their opinions are already known in their networks and the juvenile justice community, they have published papers and opinion columns on the topic and worked together many times in these ten years. Secondly, as previously stated, those strongly involved in the transformation process are a small group, they know each other, and they may have seen anonymity as useless in that context, something to be perceived more like hiding instead of privacy.

Besides, as I had been directed to them by someone from the same network, they probably thought the group of friends or close co-workers would find out about their participation anyway. Fourthly, and this seems a strong motivation to me, is that maybe they refused complete anonymity so they could separate themselves and their work from the politicians who made this law something that was not how they wanted it to be. This is visible in the way the discourse is constructed: the legislators (and the Ministers of Justice) are portrayed as a 'different' group, the 'others', those who had no knowledge on the topic, those with no consideration of the UNCRC (excepting a few names, which were also repeated over the interviews). While experts had both knowledge and international support (Mostly UNICEF and other Latin American experts).

Therefore, their participation in my research allows them to clarify to anyone who can doubt it that they were fighting for young people and a better justice, yet it was not their decision to make. They could advise but it was not binding, and they were lacking in real influence; as one interviewee stated:

*'there were few ears, they were heard but not listened to'* (R., 2017). Which again, is probably associated to the anger and frustration some have towards this process, and in order to make a clear difference they took this chance.

Another issue associated with confidentiality is that in four interviews I was asked to keep something off the record. In two of them it was related to swearing, so I was allowed to use the information but not to quote those specific words. As in many languages, there are some swearing words that are quite common and soft and are used in informal or comfortable situations to make an emphasis (this was used by many interviewees). Yet, there are some other words that have a very strong connotation, and not very commonly used in regular conversations (unless joking with friends).

Therefore, they show underlying anger and frustration, those I was asked not to quote, as they were an evident display of dislike towards other actors in the process or their actions, which, as already mentioned, was against the detached attitude they wanted to portray.

In the other two circumstances the interviewees referred to information about the relationships between other actors in the transformation process, the way they interacted, and internal conflicts (for example telling me about fights between people that led to some political decisions to gain ground again). In those cases, the problem was not about the information itself. I was told that if I found any evidence, I could use it, and it was for me to know how things worked; what should stay off the record is the identity of who gave me that particular information. This relates mostly to the fact that the connection between the actors still continue and they probably do not want to have any conflicts with their networks. Sometimes interviewees, even though they were not politicians, belonged to some political parties and the knowledge was based on that connection. Thus, they did not want to harm their party, at least not in a public way where their friends and colleagues may feel offended, also because that information was basically gossip and/or their personal interpretation of what guided the actions of other people.

Another issue to consider was language. Chile is a Spanish speaking country. I am Chilean and Chilean Spanish is my mother tongue. In consequence, I am familiar with the culture, slang, expressions, and accent. Thus, even though my research is written in English, it was too artificial to speak in that language, it could also generate an awkward atmosphere. Besides I did not know if the interviewees spoke English and I wanted to promote a more spontaneous and fluid narrative, instead of a shorter and more deeply thought in-the-moment translation of what they felt like sharing. Other researchers, who have faced similar struggle (see for example: Smith, Temple and Edwards, 2002; Chen and Liu, 2008; Shklarov, 2009; Al-Amer *et al.*, 2015) also recommend using informants' native language in all communications when possible. This answers to a variety of elements, such as the amount of time it would take to translate everything, but also to the closeness and better understanding I would have of their intended meaning, because I had access to the cultural and social meanings as well. Therefore, the informed consent, the interviews and their transcriptions are in Spanish.

In order to maintain faithfulness to the way things were said by interviewees and the meaning of their words, and thus the validity of my data, I decided to work with it in Spanish and then translate my own analysis. The advantage of resorting to translation by then is that I will be working with my own conclusions and ideas. Regardless of this, I will still need to translate the selected quotes. However, delaying translation until then increases chances of having a closer relationship and a better understanding of the meaning conveyed by my interviewees. The delay could also give me more time and deeper understanding to find a better both conceptual (Smith, Chen and Liu, 2008) and grammatical translation of participant's narratives. The purpose of the last one, is to keep consideration of participants' emphasis, while recognising cultural, social or ideological elements shaping what they were saying.

Besides, as Shklarov (2009) claims, based on her own experience in a similar situation (although between Russian and English): it is probably impossible not to start analysing at the same time of translation, because it

involves focusing on the meaning of interviewees' words and what they were trying to convey. Hence, I intend to present quotes in a mixture of English and Spanish (for example translating most of it unless they use a particular expression, concept or word, which will be kept in Spanish and explained), and I have added the original quotes as well in Annex 3.

#### **IV- Analysis**

The data generated and gathered was analysed following an adaptive theory approach (Layder, 1998; Bottoms, 2008). This implies the recognition of both grounded theory and Popper's hypothetico-deductive model, where there is a flexible relation between theory and data results. The result is the generation of categories developed from the data, which are then reorganised with the purpose of increasing the level of abstraction, facilitating the analysis of their interrelation. This helps to generate theoretically informed knowledge, while promoting cumulative growth and development with the existent theory.

The selection of this model relates to the fact that it allows the researcher to develop explanatory accounts while recognising it is not possible to approach research in a theoretically neutral way. Therefore, it works acknowledging the constant interaction between theory and data. At the same time, it allows the researcher to test theory. Moreover, *'it attempts to trace the reciprocal influences and interconnections between people's social acts and the wider social (systematic) environment in which they are played out'* (Layder, 1998:20). Hence, it was suited to address all my research aims and to develop a comprehensive understanding and theoretically informed explanation of the Chilean juvenile justice reform and its interaction with the divergent and convergent influences.

As the data was being gathered (documents) and generated (interviews), and based in adaptive theory, I proceeded to develop a pre-coding (Layder, 1998). This means I identified some relevant sections and provisional codes

to organize my data. At this stage, this was mostly based in the elements identified in the literature as key in penal transformation. Then, once my fieldwork ended, I used NVivo for Windows under the licence of the University of Edinburgh. Using this software, I continued developing my codes and re-organizing the data into the factors the accounts of interviewees and the transcriptions of the political debates and presidential speeches associated to the Chilean juvenile justice reform. This allowed me to facilitate the discussion between theory and the empirical case study, their similarities and differences, challenging the reach of internationally developed knowledge applied to this local reality.

Regarding the analysis of the Chilean context during the dictatorship and in the following 17 years of democracy up to 2007. This was analysed from the documents retrieved and literature on the topic following a historical sociology approach (Skocpol, 1984; Garland, 1985; Ariño, 1995). The purpose was to understand the underlying elements of a long-term process of social change (to be presented in chapter four). This was relevant because my research focuses in the process of formation of institutions, social relationships and modern ways of living, which cannot be understood without reference to their past development.

In consequence, the following chapters of this thesis will present the analysis conducted under the selected approaches (historical sociology and adaptive theory). In them I will refer to the topics that my analysis evidenced as more directly connected, influential or shaping both the development of the need of a reform and the direction of the reform process itself. In doing so, I will address some elements mentioned in the wider literature of penal transformations, which have been identified as key in other contexts, such as neoliberalism for example. However, I will also refer to the specific context and time in which the reform took place. This will involve making connections with the situation of the Latin American region, but also in terms of the specificity of Chile as a country. Following this line, the understanding of broader concepts will also be presented based on the meaning they had in the particular time, place and culture, because as Melossi (2000) pointed out,

'crime control' can have a series of different meanings and emphasis. This will allow me to establish relations between the existent knowledge in penal transformation and the Chilean case. Assessing how effectively previous research explain these changes in a new context, and what the national process of transformation of the Juvenile justice System can say about penal transformations, providing new insights in this topic.

## **V- Discussion**

The selected methods allowed me to gather a great amount of data, including personal experiences, about the transformation process from the tutelary system to the LRPA. It involved interviewing some of those who participated in the direction the change followed more than ten years ago, and also reading documents and reports produced at those times. As a result, I was able to develop a broad vision of the timeline and events together with the underlying relationships, knowledge and main thoughts regarding the juvenile justice reform.

In this process snowballing proved to be a key strategy as it granted me access to my sample. All other means used had very little success. In fact, the lack of a gatekeeper who could provide me access to politicians made it impossible for me to interview them. I believe this has a lot to do with Chilean culture of distrusting outsiders and the fear of associating their image with negative elements that could give them a bad reputation, as it can be influential in how the press and then the public treats them. For example, regarding the public scandals already mentioned. I think this same fear influenced politicians to remain outside of any research that does not come from institutions with their own political views.

This happened in a national context of general disappointment about traditional politicians, and where the control of youth crime is being referred in political discourses as new promises to bring security, as I will show in



chapters five and six. In consequence, politicians may have felt that participating in my research implied to defend themselves and their role in a process that happened more than ten years ago. At the same time, 2017 was a year of presidential elections in Chile, and in the final days of a government, the pressure on Senators, Deputies and also Ministers increased because they had to fulfil promises or try to challenge them (if they belonged to the opposition), while stating their support for future candidates, and making new coalitions.

Another element to take in consideration as shaping my data, is that 12 years have passed since the law was implemented, and 29 since the ratification of the UNCRC. As I will show in chapters five and six, the general perception around youth offending and juvenile justice went already changing over the years of debates and discussion until its implementation. Hence, it is expected for people to view that process, their own experience but also juvenile justice, now that more years have passed, in different terms. At the same time, new events can affect what they consider relevant. For example, all the interviewees highlighted the need to improve the implementation of the law, focusing on the after-sentence stage, an aspect that was not in deep consideration during the legislative stage.

Moreover, youth offending is a topic of broad discussion in the national context at the present time and during the election debates. At the time of my fieldwork (2017) justice was considered to be failing by the media and politicians, together with a perceived crisis of the National Service of Minors [Servicio Nacional de menores, SENAME] which just opened into discussion at the end of 2016 and broke massively in 2017, although in terms of child protection. Thus, institutionalisation was coming to be perceived as losing all rights for children, as a dangerous space that will turn them into dangerous criminals, also failing to stop criminal careers, making offences increase. Therefore, everything related to crime and to the situation of young people has been a trending topic in the national context. This has only escalated since then, turning more towards crime control, to the point this year (2019), the *aula segura* [Safe classroom] measure started being applied. This has

involved the presence of police officers inside schools, and even discussions regarding if a curfew should be declared for juveniles to avoid them being in the streets at night.

Nevertheless, having all these issues present and given the flexibility of the methods selected I could adapt to the new circumstances. In the planning of my fieldwork I also thought about different options, such as focus groups or the analysis of the media (broadcasted news). However, the first option was not considered appropriate because of the complexity of gathering many experts and politicians in one place. They are people with highly busy schedules. Also, the thing that mattered the most to me was to understand the process of transformation. A focus group would have given me, probably, a lot of information regarding agreements and disagreements between these people, what they did or how they used to understand juvenile crime and justice. However, it would not grant me depth in term of their personal experience, the inner details they provided and their own personal views of past and present, making it harder to differentiate what could have influenced their current visions of what happened more than a decade ago.

Regarding analysing the media, the media, as the most widespread communication channel between the public and politicians, contains personal opinions together with meaningful events of the time; and it was supposed to be accessible through the recordings in the archive of the Secretariat of Communication of the State of Chile. However, when I contacted the Archive, they denied having any material, and mentioned other organizations now in charge of the records. Nevertheless, the new organizations claimed not to have the years I needed either. This may relate to the re-distribution of the information keepers, due to the generation of new institutions and archives, and also to the government change. Since 2007 three more governments have had place, two of them with the same President who belonged to the political opposition (the right-wing) to those who had been in power for the previous 20 years (The Concertación, a centre-left coalition). Therefore, all the internal structure of many public institutions has completely changed, which can also be linked to the precarious handling of historical material as

evidenced in the documents' subsection. As a strategy to solve this, I resorted to printed media, which I could find in microfiches in the National Library. Thus, I started going there during my fieldwork and learned how to request and use the materials.

I tried this as an option to access the views of the politicians that were not replying to the invitation to participate in my research, and also to review the main events portrayed by the press in the context of the discussion of a new juvenile justice system. Initially I looked for the two most read newspapers of the time: El Mercurio and La Tercera. However, quickly I realised that if I covered the same 17 years I had identified as the period of transformation of the juvenile justice system, it involved 12,410 newspapers. If I reduced this to only the years of the legislative debate it was at least 5 years and thus 3,650 non-digitalised newspapers. It proved to be a non-feasible line of research in the time and conditions of my fieldwork, and finally I decided not to work with them.

Despite this, I accessed a great amount of public statements of politicians due to the documents I was retrieving, because many of them mention and quote information from the press. However, if possible, in the future I would still like to use the news, and to access the opinion of those who had to implement the LRPA and were already working in the field with the old system and during the reform. This could provide me institutional views on the debate and external opinions of those involved directly in the implementation of reform.

Regarding things that could have been improved in my research during the preparation and fieldwork stage, I believe transcribing the interviews right after would have been extremely helpful. I tried to do it, but some days I had two interviews in different parts of the city, and I was also going to the libraries and scanning documents. Therefore, even though I made some connections with my notes and what I remembered from previous interviews, there were some links I did not make until transcription time, missing the opportunity to ask more about certain events and people. Also, resorting to

online requests for documents from institutions such as the Ministry of Justice and SENAME was not fast and not very helpful. I regret not having requested personal physical access to the archives to at least be sure there was absolutely no way of finding old documents.

Finally, I was highly concerned about balancing tracking and accessing interviewees in an ethical manner, without harassing them or putting them off, which could also have a negative impact in my data generation if they eventually agreed to participate. I wanted to avoid their participation being the result of pressure instead of the interest to share their experience. Also, some of them had changed their field of work, some politicians for example were now in private companies, so it felt like forcing my entrance into their private lives when they had chosen not to have a public role anymore.

Finally, I had the hope eventually I could find a more official way of talking to them, which never happened. Thus, I was not active enough to actually go and sit down there until I got a meeting to at least discuss the chance of actually talking to them (even though there were secretaries that answered my calls and dismissed any possibility many times).

Despite all this, I was able to generate a great amount of data that allowed me to have a very clear notion of what happened before and in the reform process and how it happened. At the same time, the documents provided me the national context at the time, clarifying the political, social and economic situation of the country. The following chapters will dedicate to present the analysis of the data both retrieved and generated. This will involve making reference to the documents and the voices of the interviewees, relying on quotes as supporting evidence.

In terms of structure, the findings chapters will begin by providing a clear account of the Chilean landscape. In the following chapter, I will address the political change from democracy to the authoritarian regime of the 1970s, the main changes the country faced over the dictatorship and the following transition to democracy in the 1990s. Likewise, the 'Historias de la ley', the presidential candidates government plans and the annual presidential

speeches allowed me to understand the role and drivers behind key political actors. Hence, I was able to generate an explanation of the reasons and timing behind the reform, to be addressed in chapter five. Chapter six will evidence the polity building process in which the new Juvenile Justice System was developed, defined and finally implemented, addressing the direction the reform followed and the main factors shaping it. Finally, chapter seven will talk about how the Chilean case challenges the broader literature on penal transformations, re-framing some and providing new elements to take into consideration.



#### **Chapter 4: A new society: the base for the future Juvenile Justice**

On September 11, 1973 the history of Chile had a sudden turn from being one of the most democratic countries in the world (Hilbink, 2007), to entering a 17 years dictatorial military regime under the lead of General Pinochet. This dramatic change started with the bombing of the National Government Palace, La Moneda, by the air force of the country, and led to considerable changes of what Chile had been.

What happened in the 1970s and 1980s generated the socio-political, economic and institutional base of the Chile that decided to reform the Juvenile Justice System after more than 70 years of tutelary approach. It also determined key elements of the reform process. For example, the military regime created a new national Constitution, thus a new way of making laws and creating public institutions. Furthermore, a new elite that remains in power to this day was born, and they, as it will be shown in chapters five and six, had a key role in the direction followed by the new Chilean juvenile justice.

Moreover, the defeat of General Pinochet in the 1988's plebiscite led to the formation of the political coalition of parties that opposed the authoritarian regime at that time: the Concertación. This coalition provided the presidents that ruled since democratic restoration in 1990 until 2010, thus including the whole period of discussion, legislation and implementation of the new Chilean Juvenile justice. From the end of the dictatorship and until the implementation of the Adolescents' Penal Responsibility Act [LRPA], there were four Concertación presidential governments: Patricio Aylwin (1990-1994); Eduardo Frei (1994-2000); Ricardo Lagos (2000-2006); Michelle Bachelet (2006-2010).

The dictatorship and posterior democratic order can be described as a time of socio-political and cultural restructuration and conflicting notions of what democracy means and involves. Amongst the many changes, it is possible to find a profound reform of the political and economic systems, and the deep

transformation of the interactions between citizens and of them with the state. This last point involved the renovation of social values and priorities, but also turning a very politically active citizenship into a nearly completely passive one, which later evolved into disinterest, widespread mistrust and hopelessness towards the political class and their actions. All these elements eventually marked the characteristics of the democratic order of the 1990s and 2000s. Moreover, the authoritarian regime left new economic, societal and political constraints. At the same time, there were few resources, and no solid network or positive communication between conflicting ideas.

All these factors influenced an increasing need for a Juvenile Justice Reform. These factors also marked the characteristics the LRPA came to have, the expectations set on it, and the understanding of youth offending and crime, as by the end of the 1990s youth offending was an element of unprecedented focus for both the wider population and politicians (Dammert, 2005).

The purpose of this chapter is to identify, explain and clarify the specific context in which the juvenile justice reform developed. Therefore, I will start by addressing the ideology of the authoritarian regime, together with the means used to impose it to the population. This will be followed by the main structural changes faced by the country. It will involve analysing the elements behind the development of an authoritarian government plan, and the reforms made to ensure their continuity into democratic times. Then, the drastic imposition of a new economic model will be covered, together with the birth of a new elite and a new poor class. The conclusion will address the new interaction between Chilean citizens and of them with the State after such a transformation of the country. The presentation and analysis will start from the authoritarian regime of the 1970s, also including the transition towards the 1990s' democratic order, addressing how the dictatorship shaped the organization of modern democratic Chile.



## **I- The imposition of radical changes: Pinochet's dictatorship**

The authoritarian regime of the 1970s and 1980s was born from the plot of two main factions of the Chilean Armed Forces, the Navy and the Air Force (Valdivia, 2001). The purpose of the coup was to overthrow President Allende, the first democratically elected Marxist President in the world, and his radical social, political and economic reforms. Allende focused on strengthening the state, greater control of private property, egalitarianism, and reorganizing the social structure to prioritize the needs of the poor, working and middle classes (Wesson, 1982; Constable and Valenzuela, 1993; Lawson, 2005; Livingstone, 2009; Palieraki, 2015).

The first year of Allende's governance went by with economic success and the fulfilling of many of his campaign promises: companies were nationalised, wages rose, the GDP grew, house for homeless were built, land was redistributed, inflation fell, and unemployment reduced (Wesson, 1982; Oppenheim, 1993; Vanden and Prevost, 2002; Lawson, 2005; Livingstone, 2009).

However, by 1972 Chile was facing budget deficit, inflation and debt (Oppenheim, 1993; Raczynski, 2000). The crisis worsened with the influence of the United States which openly opposed Allende's government. The Nixon administration cut all economic aid and credits to Chile except to the Military (Wesson, 1982; Constable and Valenzuela, 1993; Oppenheim, 1993; Rettig Report, 1993; Vanden and Prevost, 2002; Lawson, 2005; Livingstone, 2009). At the same time, political positions in the country radicalized. Allende's supporters took independent action to hurry the implementation of his campaign promises: they occupied land and factories and called citizens to bring social change by force. Likewise, a small radical right-wing group, Patria y Libertad [Fatherland and Freedom] took violent actions. Tensions increased because of complaints from business owners regarding nationalization policies of the Government. The result was the presence of

armed radical groups engaging in conflict in the streets (Lawson, 2005; Livingstone, 2009).

To control this growing conflict, Allende declared a partial State of Emergency and asked for the participation of the Military in his cabinet. This responsibility fell on General Prats. However, he resigned and was replaced by General Pinochet, who in 1973 was appointed Commander in Chief of the Army. Not a month later General Pinochet brought the fall of Allende and became a dictator, even though some authors claim he did not participate in the plot (Valdivia, 2001; Constable and Valenzuela, 1993).

The Armed Forces claimed, as justification for their actions, that President Allende, the Popular Unity [Unidad Popular, UP, the party coalition represented by the government], and his supporters were bringing chaos and conflict to the country. On the contrary, they intended to bring security, economic stability, discipline and authority back (Valdivia, 2001). Moreover, Allende's actions had been declared illegal by a resolution of opposing members of the Congress in August 1973, calling for the Military to act (Constable and Valenzuela, 1993; Oppenheim, 1993; Rettig Report, 1993). Therefore, the coup was also presented as a need to recover the rule of law (Hilbink, 2007).

What is more, there was wide support amongst citizens to take radical action, as the country had been progressively divided and polarized in violent political conflict since the 1960s. According to Valdivia (2001), supporters of the coup saw it as much needed action to give a break in the economic crisis. Following Chaparro and Cumplido's arguments (1982), it was mostly about bringing order and security, although they also mention the emphasis on reducing the national context of scarcity, where access to daily goods was limited and families had to queue to buy food and supplies. The media also supported the coup through campaigns creating fear, for example using radical messages such as '*it is us or them*' (Rettig Report, 1993).

Since the very beginning, the new rules were dedicated to halt all political action, to take full control over the country and to stop any opposition from

arising. This was accomplished through the display of military force and the movement of troops. Their fight against the left continued all throughout the authoritarian regime and extended eventually to anyone who criticised their government. For example, two lawyers were expelled from Chile in 1976 upon returning from the 6<sup>th</sup> assembly of the Organization of American States where they discussed the Human Rights situation in the country (Constable and Valenzuela, 1993; Rettig Report, 1993).

The purpose of this section is to present the ideology of the authoritarian regime and the means used by the Armed Forces and the dictator to impose their own views over the country for the following 17 years. The use of these means, mainly legal mechanisms, Human Rights' violations and repression, and media censorship and control, provided the military government with the power to do as they saw fit, and to carry radical transformations that replaced all previous logics of interaction between citizens and of them with the State.

#### 1. The ideology behind the authoritarian regime

The Armed Forces rejected Allende's government for what they blamed as lack of efficiency, their disagreement with the notion of class struggle and their preference for capitalism and private property from the late 1920s when Colonel Ibañez became president (Valdivia, 2001). There were also concerns about the national economy in general, and more specifically the impact of the economic crisis in resources allocated to the Armed Forces, as well as the halt on modernization (Oppenheim, 1993; Lawson, 2005). Finally, there was a tradition against communism, reinforced by training in counterinsurgency provided by the United States in Latin America against the USSR and the Cuban revolution in times of the cold war (Constable and Valenzuela; 1993; Oppenheim, 1993; Rettig Report, 1993; Livingstone, 2009).

Following from that, the Armed Forces directed their efforts to disband the support to the UP [Popular Unity, the coalition supporting Allende], and any leftist thinking. They began their rule by immediately quieting the leaders of the opposition. There was evidence of troops being sent to University campuses and political parties' buildings, raids into factories or houses of known leftist figures in the supposed search of weaponry, and illegal detention in secret centres (for example Dawson Island in the south of the country, where former members of the UP government were sent right after the coup) (Constable and Valenzuela, 1993; Cavallo, Salazar and Sepúlveda, 2008).

The reach and radicalization of their measures increased to the point that, according to the Rettig Report (1993), more than 20,000 Chileans left the country for political reasons in the first two years of the regime. For example, administrative staff were removed from public positions using Decree Law 22 and 25, and by 1975, more than 40,000 people had been dismissed from government institutions (Constable and Valenzuela, 1993; Cavallo, Salazar and Sepúlveda, 2008). What is more, through Decree Law 50, the State intervened in areas like education, imposing members of the Armed Forces as new rectors of the universities. This resulted in a process of cleansing where approximately 1,000 academics and over 20,000 students were expelled (Cavallo, Salazar and Sepúlveda, 2008); and some fields of knowledge, such as sociology, social work and criminology for example, became highly controlled and even banned (Constable and Valenzuela, 1993).

The core values of the authoritarian regime, at least in official speeches and documents at the time, were national unity and apoliticism. The first one, was presented as the most prized objective in the Declaration of Principles of the new authorities in March 1974. It acted as a justification for their actions, because Marxism was constantly blamed for bringing conflict and dividing society. The notion of social struggle was forbidden. This national unity, openly spread in public discourses and in the image the military government gave to the nation, was explicitly stated as a must. Actions against it were

equalled to anarchy, violence, indiscipline and deserving punishment (Rettig Report, 1993; Cavallo, Salazar and Sepúlveda, 2008). For example, all the members of the Junta had to present a united front, despite the growing conflict and disagreement between certain members and General Pinochet (Valdivia, 2001).

Being apolitical related to the blame the military attached to all politicians for allowing the country fall into chaos. Therefore, even though they were clearly against leftist ideas, they criticised all political parties. The right-wing was seen as prioritizing their own interests over the country, and as such they were not prepared to rule either (Chaparro and Cumplido, 1982; Garreton, 1982; Cavallo, Salazar and Sepúlveda, 2008). In consequence, as soon as he took on power, General Pinochet banned all parties that had supported Allende's government, that is communist, socialist or driven by leftists' ideas (Decree Law 77). At the same time, all other parties entered a recess period (Decree Law 78). They were forbidden to act or engage in political participation at the expense of penalties. In 1977 through Decree Law 1,697, all political parties were dissolved. Being 'political', 'communist' or 'leftists' became insults, and anyone accused of being any of those could be at risk of losing their position. The government saw what they did not as politics but as protecting a country that was not prepared for democracy, and thus they were superior to the previous order (Hilbink, 2007).

## 2. Legal Mechanisms

After the coup, General Pinochet assumed the leadership of the State, and the Military Government Junta was created. The Junta was a group formed by four representatives of the Armed Forces' branches and the Police that took the role of the Executive (Decree Law 1); they later assumed the legislative role (Decree Law 28). The Junta stated its purpose as the restoration of Chilean justice and institutions which were negatively impacted by the ideology of Marxism-Leninism. They also claimed as their moral duty

to end with Allende's 'illegitimate' government, which would not mean breaking with the independence of the judiciary, or workers' rights (Constable and Valenzuela, 1993; Rettig Report, 1993; Cavallo, Salazar and Sepúlveda, 2008).

To accomplish these purposes and moral duties, the activity of the Congress was immediately stopped, closed and dissolved (Decree Law 27). Moreover, through Decree Laws 3 and 4 a State of Siege and Emergency were declared (to be understood as a State of War). The States of Exception were a permanent element of the authoritarian regime and were renewed for almost its 17 years (Constable and Valenzuela, 1993; Rettig Report, 1993; Lawson, 2005).

Moreover, with the declaration of Chile in a State of Emergency came the predominance of National Security. This implied two main things: 1) the imposition of military values, such as order, discipline, hierarchy, authority and security, and 2) It allowed the armed forces to label the opposition as enemies of the fatherland (Chaparro and Cumplido, 1982; Valdivia, 2001). This gave powers to the new head of the State, General Pinochet, to impose a country-wide curfew, to send the Armed Forces to the street, to detain people without need of legal process, restrain constitutional rights, and to forbid all actions he deemed unwanted, such as any demonstrations against his new rule, or of support towards the former president (Garreton, 1982; Constable and Valenzuela, 1993; Rettig Report, 1993; Lawson, 2005).

Initially, the leadership of the Junta was to be rotated among the four representatives, who had also divided governmental administration according to branches. General Pinochet of the Army, in charge of security; General Leigh of the Air Force, responsible for social welfare; Admiral Merino of the Navy, in economy; and General Mendoza of Carabineros (paramilitary police) dealing with agriculture. However, in 1974, through the Decree Law 527, Pinochet assumed as Supreme Chief of the Nation, and eventually as President (Decree Law 806). This only increased his powers, making his vote mandatory for any modification, while decreasing the weight of the Junta's

decisions. Decree Law 527 also granted the Commanders indefinite time in their positions, to be only removed by resignation, death or incapacity, which gave them extraordinary control over the future of their subordinates (Constable and Valenzuela, 1993; Rettig Report, 1993). The power of the heads of the authoritarian regime thus was increasing.

All of this could happen through the use of the Decree Laws. These are constitutional mechanisms for the Executive Power to make laws without passing through the Congress, or when there is not a Congress, as it happened in the authoritarian regime. They allowed the imposition of General Pinochet's rules without further discussion. This meant Pinochet could determine, for example, despite hierarchy and ranks in the Armed Forces, who would obtain a vacant role, dismissing those he thought not faithful to his rule (Cavallo, Salazar and Sepúlveda, 2008). Decree Laws also impacted on general civil rights, for example Decree Law 604 was designed to prohibit the entrance to Chile to anyone who could bring ideas or actions against the government (Rettig Report, 1993); or Decree Law 81 which gave the power to expel people from Chile (Hilbink, 2007). Thus, they gave appearance of legitimacy and legality to the new order, while increasing their powers (Constable and Valenzuela, 1993).

The severity of the regime's repression, and its legitimacy, exacerbated with the attitude taken by those who could legally oppose them, namely the Judiciary (Rettig Report, 1993). Despite the authoritarian government having assured the independence of the Legal Power, Hilbink (2007) shows how in fact the Judiciary failed to defend Human Rights and respect law principles due to their own personal preferences, but mostly because of the effects of their legal philosophy and institutionality, where being involved in politics had negative connotations.

Moreover, the President of the Supreme Court, Enrique Urrutia, immediately recognised the authority of Pinochet and the regime, and expressed the support of the judiciary in varied occasions (Constable and Valenzuela, 1993; Oppenheim, 1993; Cavallo, Salazar and Sepúlveda, 2008). Administrative

barriers such as the still working 1925 Constitution were sorted quickly through the creation of new rules. For example, the Decree Law 788 in 1974 explicitly stated Decree Laws to be considered amendments of the constitution if the documents clashed. After that, the judiciary accepted and endorsed the Decree Laws produced by the military government (Hilbink, 2007).

In fact, many judges and lawyers who rose their voices to defend Human Rights saw their careers ruined. Relevant positions were given to those who favoured the government policies, and the main legal measure to protect citizens, Habeas Corpus petitions, were systematically rejected. Confession under torture was accepted, the word of the repression agency, the Directorate of National Intelligence [Dirección de Inteligencia Nacional, DINA], was never questioned, and when they refused to attend to court or to provide evidence, the cases just died in court (Constable and Valenzuela, 1993; Rettig Report, 1993; Hilbink, 2007). Moreover, the declaration of Chile in State of Siege and of Emergency allowed the use of Military Tribunals. This reduced the power of the judiciary, while increasing the authority of the Armed Forces to detain people for longer periods of time and take harsher measures, such as the death penalty (Constable and Valenzuela, 1993; Rettig Report, 1993; Hilbink, 2007). The following section will focus specifically on the harshest and more violent mechanisms used daily against the Chilean population.

### 3. Human Rights violations

Given the base of legality the authoritarian government had set for its rule, they had plenty of space to act. Their actions involved physical and psychological oppression, not only towards the left, but against regular citizens as well, forcing the stoppage of the freedom to express their views, restricting their liberties, violating their rights and cancelling their political participation. This was done through the Intelligence Agency of the military



government and led to widespread violence that was kept in secret and was never properly condemned nor prosecuted. This subsection will present how these Human Rights violations took place and their outcome in subsequent democratic times

*a) The 'super powerful' Intelligence Agency*

Most of the abusive actions of the military regime were staged by the Directorate of National Intelligence [DINA], created officially in June 1974 by Decree Law 521, published in a limited edition of the *Diario Oficial*<sup>4</sup>.

However, there is evidence that they started to work before that (Constable and Valenzuela, 1993; Rettig Report, 1993). This independent public agency, created with the purpose to protect national security, depended, in paper, directly on the Military Junta. However, in practice it could only be controlled by the maximum authority of the country, General Pinochet (Constable and Valenzuela, 1993).

The DINA has been associated to actions such as creating secret detention centres (torture camps); kidnaping, disappearing or murdering people; raiding properties without legal orders; and the appropriation of the goods and properties of those who fell in their hands (Constable and Valenzuela, 1993; Oppenheim, 1993; Rettig Report, 1993). Amongst the torture means used, they went from beatings and rape to grill, suspension, immersion and the torture of family members to create psychological pressure (Rettig Report, 1993).

The first objective of the DINA was to eliminate the key figures of the MIR [Revolutionary Left Movement, in Spanish *Movimiento de Izquierda Revolucionaria*]. This evidences how much it was a fight against leftist ideology, as the MIR was a Marxist group that had not joined the UP (Rettig Report, 1993; Palieraki, 2015). It was followed, in 1975 by the members of the Socialist Party, and finally in 1976 it turned against the members of the Communist Party (Constable and Valenzuela, 1993; Oppenheim, 1993;

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<sup>4</sup> All Chilean laws and decrees are valid only after being published in the *Diario Oficial*. It was created in 1876 and works since then. It is controlled by the Interior Ministry.

Rettig Report, 1993; Cavallo, Salazar and Sepúlveda, 2008). The order can be understood in terms of how actively they fought the regime after the coup. The MIR was the most radical fraction of Marxists. The Socialist Party also had a branch of more radical members who had actively engaged in armed resistance. The Communist Party had initially refused to take direct action against the Armed Forces, encouraging change through pacific means. Eventually their ideology changed, and by the mid-1980s, a branch of the party organised and started actively fighting the regime with actions such as planting bombs, and an attempt to kill Pinochet in 1986 (ibid).

The DINA was organised by members of the Armed Forces, but it was a complex network of sections that initially employed over 400 people and it is said to have later employed thousands. It involved many civil volunteers who joined in the Civic Intelligence Brigade and took it upon themselves to report anyone whom they thought supported Marxism (Cavallo, Salazar and Sepúlveda, 2008). Members of the radical right-wing group Fatherland and Liberty were quick to collaborate with the DINA (Constable and Valenzuela, 1993). Moreover, some members of the same parties they intended to eliminate, unable to resist torture, ended up becoming informants (Rettig Report, 1993). Those who tried to denounce what was going on, regardless of their affiliations, faced consequences. For example, in 1977 a general who manifested openly his worry about the national Human Rights situation, faced immediate forced retirement (Constable and Valenzuela, 1993).

Amongst the key elements characterizing the work of the DINA, secrecy was essential. It was facilitated by the lack of need for official channels of actions or legal authorisations. The Decree Law that created the agency gave them enough powers to carry out detentions, demand information from any state institution and agency, and letting themselves decide whether to collaborate with other institutions, such as the judiciary (Constable and Valenzuela, 1993; Rettig Report, 1993). Secrecy was strengthened using illegal means such as false number plates in their cars, and misinformation strategies, for example stating in the media that people had died in gun battles that never took place (Rettig Report, 1993).

Their work was facilitated by the direct interaction between the head of the agency, the Colonel Manuel Contreras and General Pinochet (Cavallo, Salazar and Sepúlveda, 2008). This gave them the power to halt, suspend or destroy the careers of those who opposed them, keeping reports of most members of the left, but also of the Armed Forces and everyone who wanted to work for the government. Eventually, the DINA approval was needed before reaching important positions in the institutional structure of the regime (Constable and Valenzuela, 1993; Rettig Report, 1993). Therefore, they had different ways of making sure their power was clear and remained silently spreading.

Furthermore, their power grew in what was called 'Operación Condor', an agreement between the dictatorships of the southern cone -Argentina, Brazil and Uruguay for example- to facilitate the prosecution of dissidents abroad. Amongst their actions we can find the murder of General Prats -the former Commander-in-Chief of the Army- and his wife in 1974 in Argentina; or the attempted murder of Leighton, a member of the Christian-Democrats, and his wife in Rome in 1975 (Constable and Valenzuela, 1993; Rettig Report, 1993; Huneeus, 2000; Cavallo, Salazar and Sepúlveda, 2008; Livingstone, 2009).

In 1977, the DINA was replaced by the National Central of Information [Central Nacional de Informaciones, CNI] (Decree Law 1876 dissolved DINA and Decree Law 1878 created the new agency). The change was a reaction to international pressure after the murder of Orlando Letelier and Ronnie Moffit in Washington, DC, in the United States by the DINA. The former was a member of the Socialist party who had worked for Allende's government as ambassador in the United States, having also served as Minister of Defence. He was imprisoned after the coup and exiled to the United States where he had a role opposing the regime from abroad. He was murdered along with his secretary with a bomb under his car, his driver, Moffit's husband, survived. The plot involved false passports and the participation of Townley, a US citizen with experience in explosives. The United States determined Townley and Colonel Contreras to be responsible and wanted extradition. Townley was handed to the FBI, where he disclosed information about the DINA,

bringing a big media blow to the regime (Constable and Valenzuela, 1993; Cavallo, Salazar and Sepúlveda, 2008).

This generated a turn in the support the United States had held against communism and towards the authoritarian regime (Constable and Valenzuela, 1993; Livingstone, 2009). The result was the international focus over the violence of the Chilean dictatorship. That same year, the United Nations condemned Chile, with the support of 96 countries (Constable and Valenzuela, 1993; Hilbink, 2007; Cavallo, Salazar and Sepúlveda, 2008). In consequence, the regime developed a series of actions to fight its negative image. Amongst these actions, we can find the dissolution of the DINA, public condemnation of their actions, and the creation of a new agency.

However, the change was initially only a nominal reform, as the director, purpose and actions of the CNI remained the same as the DINA, at least for the first months, until Contreras was dismissed (Constable and Valenzuela, 1993). Even then, many of the employees were faithful to their former boss and to the secrecy of the DINA (Rettig Report, 1993). This led to the new director firing members of the agency. However, contrary to what happened in the DINA, the director of the CNI changed more than once. In those years, cases of corruption within the institution also came to be known (Constable and Valenzuela, 1993; Cavallo, Salazar and Sepúlveda, 2008).

From 1977 until 1990 when it was legally dismantled, it was the CNI that staged the prosecution, murder and torture of the opposition. This time, the agency depended on the Interior Ministry. Initially, disappearances decreased meaningfully with the change. However, the levels of repression increased again around 1983 with the break of massive protests on the streets and the organization of the opposition in small guerrilla groups (such as the Manuel Rodríguez Patriotic Front associated to the Communist Party, or the actions of members of the MIR who came back from exile) (Rettig Report, 1993).

It is worth keeping in mind that even though the DINA and the CNI were the major institutions in charge of political repression, the intelligence of each

branch of the Armed Forces also played a part. There is evidence, though, that they did not get along with the DINA and many times they clashed, leading to conflicts, confusion and fights for recognition (Constable and Valenzuela, 1993; Cavallo, Salazar and Sepúlveda, 2008). One of the key agencies in the mid-1970s was the Joint Command, led by the Air Force (Rettig Report, 1993). The friction ended after the authorities of each group decided to make an agreement, and political repression continued without problems between agencies. Although some politicians, members of the Armed Forces, and civil actors inside the regime still disliked the DINA/CNI and the direction of Colonel Manuel Contreras (Cavallo, Salazar and Sepúlveda, 2008).

*b) Human Rights violations and the prosecution of dissidents*

The amount of violence of the military regime is not fully known, as the CNI and Armed Forces legally burned all information once the dictatorship ended (Lawson, 2005). Therefore, when President Aylwin assumed the first democratic government in 1990, he created the Commission for Truth and Reconciliation to investigate the Human Rights violations under the authoritarian government, in what came to be known as the Rettig report.

This Commission was able to conclude that the actions of the authoritarian regime involved torture, murder, illegal detention, forced exile and the disappearance of people. Estimates claim more than 3,000 deaths and disappearances and over 27,000 cases of imprisonment and torture. From 1973 to 1975 the government detained more than 42,000 people for political reasons. The numbers decreased after that but were still high. It is also worth to know that about 50% of the victims had no political affiliations but they were mostly from poorer, vulnerable sectors (Constable and Valenzuela, 1993; Rettig Report, 1993).

In the case of the 'disappeared', it usually meant they were illegally detained, taken to a secret detention centre, tortured, and then murdered; or they were murdered on the streets. The key point was denying the detention ever took place or claiming the person had been freed or transferred. Many of the

corpses were never found, some others appeared eventually floating on a river, or years later buried in unnamed spots. Up to this day there are many people who remain 'disappeared', with no clarity of what happened to them. It was a systematically applied method in the first years of the regime, though it decreased later in time (Rettig Report, 1993).

There were also some cases of violence that became publicly known at the time when they happened. They rose to public attention for their severity, and outraged defenders of Human Rights. An example of this is the 'Burned case' [caso quemados], where two young students were set on fire when alive. Actions like these were likely to cause fear in the community, as they were unexpected and excessive. They also caused distrust, because spies of the DINA and CNI could be around, and any support for the victims could bring harsh consequences (Constable and Valenzuela, 1993).

Amongst the data available, Hilbink (2007) informs that between 1981 and March 1990, when democratic rule returned, the number of cases of torture and cruel treatment were over 6,000. The only institutions who properly cared for the situation within the country came from the churches. Together, they created the Committee of Cooperation for Peace in Chile, the National Committee for Refugees, and the Vicariate of Solidarity. They assumed the responsibility of providing both legal and social assistance and support to victims and families of victims of state violence. They also provided the space for family members of the disappeared to organise. According to the Rettig Report (1993), the Organization for Victims and Victim's relatives started working in 1974 with only 20 members, by 1975 it had already 323 members. In the first two years of the Committee for Peace it handled over 7,000 cases and 2,342 Habeas Corpus<sup>5</sup> (Constable and Valenzuela, 1993). And by 1978, the Vicariate of Solidarity had documented 613 cases of 'disappeared' (Cavallo, Salazar and Sepúlveda, 2008).

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<sup>5</sup> Legal recourse that allows any person to report unlawful detentions to the court and request the immediate reconsideration of the legality of their detention.

The effects of State violence were probably heightened by the lack of consequences after they took place. Prosecution was always halted, using the excuse of the State of Emergency; or that it was in defence from the actions of armed subversive enemies. This was worsened by actions of the judiciary, where for example in 1975 the President of the Supreme Court openly denied that people disappeared. Habeas corpus or appeals of protection were declared inapplicable under States of Siege, and they were generally not investigated (Rettig Report, 1993). Moreover, to make sure they were never punished for their actions, General Pinochet and the Military Junta launched the now infamous Amnesty Law.

In April 1978 through the Decree Law 2,191 the Amnesty Law came into effect. It was presented as an opportunity for reconciliation and unification of the country, as members of the left who had been imprisoned for their political crimes would be freed -albeit most of them were exiled (Constable and Valenzuela, 1993). The law stated that all criminal actions committed under the State of Siege from September 1973 to March 1978 -with the only exception of the Letelier case- would not receive legal punishment (Rettig Report, 1993). The result was that all members of the Armed Forces who had participated in human rights abuses during those same years were now legally untouchable.

*c) The debt with Human Rights in democratic Chile*

Once Chile transitioned to democracy in 1990, the process to formally and officially prosecute the human rights abuses was slow. All attempts to modify the Amnesty Law or to clarify the past faced hostility from the conservative right-wing. They also risked the precarious balance of the relationship with the Armed Forces (Oppenheim, 1993; Hilbink, 2007; Borzutsky, 2017).

The Human Rights groups and family members of the disappeared and dead quickly requested the end of impunity and action from the democratic government (ibid). However, there was little general interest in the issue. The concern was limited to those who directly experienced some sort of victimization, as Pinochet's supporters believed the actions of the military had



been in defence from terrorist actions, to protect the country, or a Marxist invention (Constable and Valenzuela, 1993; Borzutsky, 2017). Most Chileans identified as more pressing matters issues of health, poverty and labour opportunities (Álvarez, 2014).

The first change was what came to be known as the 'Aylwin doctrine'. Initially the courts refused to even investigate the Human Rights cases taken to them, using the excuse of the Amnesty Law. However, Aylwin claimed that for Amnesty to be applied, the case had to be investigated and the facts proven (Oppenheim, 1993; Hilbink, 2007; Borzutsky, 2017). Nevertheless, in practice, this did not imply the clarification of events. The Armed Forces denied the actions of their soldiers until 2001; when they reported 180 disappeared whose remains had been thrown to the sea. They made no mention to the cases of over 3,000 people killed and disappeared as claimed by the Rettig Report (Borzutsky, 2017).

The denial was also mixed with open requests to leave the past behind and move forward, which was promoted by a variety of figures, from the Commanders in Chief of the different branches of the Armed Forces to Mayors and other political figures. They all presented the need to end the prosecution of Human Rights abuses as a matter of national unity (Álvarez, 2014; Borzutsky, 2017).

At the end, following Borzutsky (2017), what happened was the denial of justice and the search of only some truth. The Chilean National Commission of Truth and Reconciliation and its product -the Rettig Report-, or the Valech Report in 2004, provided a description of what the victims had lived. They also involved compensation for victims or family members. However, the names of the perpetrators remained secret. The location of the disappeared was not discovered and there was no trial or a sentence for the great majority of them. In fact, most of the agreements to bring truth involved ending the trials and stopping prosecution soon after disclosure of information. To stop the trials was presented as mandatory to achieve reconciliation.



The situation changed when General Pinochet was detained in London in 1998, and later extradited back to Chile under the charges of torture and conspiracy to torture. It forced the government of President Frei to face the issue (Borzutsky, 2017). Pinochet's immunity was finally revoked in 2004, but in 2005 he was declared unable to stand trial. Later that year he was charged with fraud and by 2006 only a tax evasion case was on court. He died before being tried. The process shows how hard it was to push forward Human Rights cases against the military and the permanent debt of the transition; where the wants of those supporting the dictatorship ended being preferred. It also brought forefront issues such as impunity and how slow and inefficient the courts could be.

The key element to keep in mind from this subsection is that the Armed Forces and the dictator were willing to take all actions to reduce their enemies. Their power expanded in the different realms of social life, impacting in the way to interact with the new authorities, also eroding the quality of social relations. The consequences for thinking differently, or supporting the opposition were harsh, the legality of the means bypassed, the authoritarian practices and enforcers untouchable. The magnitude and effects of the human rights abuses that took place have been mentioned in several documents (Chaparro and Cumplido, 1982; Garreton, 1982; Constable and Valenzuela, 1993; Oppenheim, 1993; Rettig Report, 1993; Gobierno de Chile, 1996; Lawson, 2005; Cavallo, Salazar and Sepúlveda, 2008; Livingstone, 2009; Schild, 2013; Palieraki, 2015). They left a permanent mark, not only in social trust, but also in the national strength to build resistance to the regime. Political entities had been banned and the only resource of regular citizens was to speak out, which brought them government approved chase, with secrecy and excess of power that was hard to fight. The result was the total crush of social groups, forcing them to the bottom of society while those close to the authorities rose.

Then, when the political landscape changed, the Human Rights debt did not become the central topic, despite being key in the democratic discourse. Little was done to effectively prosecute violations, bring justice or even officially recognise what had happened. In fact, it took two Presidents of the democratic period, and the detention of Pinochet in London in 1998, to see a more active attitude in the judiciary towards clarifying and prosecuting those cases where the Amnesty Law could be bypassed.

#### 4. Media censorship: allowing, expanding and legitimating the changes

In order to keep 'the enemy' controlled, the military also took control of the media. The transmission towers of opposition radios were bombed and then, through the same Decree Law that had banned all leftist parties; their infrastructures were seized by the state. For example, Radio Magallanes, from the Communist Party, transmitted the last words of President Allende: the next day the Armed Forces destroyed their equipment (Cavallo, Salazar and Sepúlveda, 2008). The public communication channels of the opposition were thus blocked, and the government used their infrastructure to create Radio Nacional in 1974 (Skalpelos, 1991; Constable and Valenzuela, 1993).

The control expanded through legislation. For example, with the Decree Law 12 in 1973, stating that all information had to be confirmed by the Junta before reaching an audience, at the risk of military intervention. Old laws that had never or rarely been used were now in full power, such as the law 9,362 of 1949, which allowed the President to restrict the freedom of the press for six months periods. (Skalpelos, 1991).

At the same time, messages in favour of the military regime were the only ones allowed, and actively encouraged (Skalpelos, 1991). This strategy had the support of El Mercurio, one of the main news journals of the country owned by Agustín Edwards, a regime sympathiser who had received funds from the United States in order to campaign against Allende in the 1970's presidential elections. El Mercurio was dedicated to promoting the military

government policies and reinforcing the official version of the national situation (Constable and Valenzuela, 1993; Livingstone, 2009).

Nevertheless, control was mostly accomplished through television. As the number of households with a set increased dramatically in those years and political debate was prohibited, the channels were instead filled with soap operas and light shows (Constable and Valenzuela, 1993). According to Lawson (2005), there was a complete cultural blackout, as even books, films and plays were banned and controlled; authors were forbidden the entrance to the country and artists were harassed (Constable and Valenzuela, 1993; Rettig Report, 1993; Cavallo, Salazar and Sepúlveda, 2008).

All messages against the military regime, criticizing their actions, mocking their members, or giving information they wanted to keep secret -such as human rights violations- resulted in actions from harassment to complete shutdown. For example, 'Que pasa' magazine, despite supporting the regime openly, made the mistake of publishing the story of a youth who had been kidnaped by the DINA. After that, the editor was attacked (Cavallo, Salazar and Sepúlveda, 2008). Moreover, some journalists and artists mysteriously died, disappeared or were detained in those years. This led to fear, which alongside the consequences of breaking the censorship resulted in a complex system of self-censorship (Skalpelos, 1991; Constable and Valenzuela, 1993; Rettig Report, 1993)

The effects of self-censorship were increased by the replacement from media state financing to 'free' market. Although the most widespread television channels and radio stations remained property of the government. What is more, the authorities reserved the right to decide who could own media, and new owners were bounded to the Decree Laws determining what could be transmitted (Garreton, 1982; Skalpelos, 1991).

Despite all, in the 1980s opposition media started appearing again, such as the magazines 'Apsi' and 'Análisis', suspended again in 1984 under a new State of Siege (Constable and Valenzuela, 1993). Initially, they were dedicated to reporting the Human Rights abuses, which granted them the

support of political parties that kept working underground (the Christian-Democrats, for example), and professional associations (Rettig Report, 1993). But it was only in 1986 that the first opposition newspaper was approved. However, even in the first democratic years the censorship laws were still in place. This allowed the military to take actions against journalists who criticised them or their actions, at least until the law was changed. And even after that, the media portrayals of the authoritarian regime, the silence over Human Rights' violations and the lack of other perspectives remained, as most of the media continued in the hands of conservative supporters of the authoritarian regime (Oppenheim, 1993).

This section has evidenced the means used by the military government to impose their ideology in the country, banning all options of official and unofficial opposition and retaliation. The creation of a legal apparatus that sustained their actions gave them an appearance of legality that convinced the common citizen who also ideologically rejected Marxism, Communism and Socialism, but would never support the level of violence displayed by the Armed Forces. Moreover, the secrecy of the actions of the DINA and the CNI, together with the misinformation spread by the media, allowed to perpetuate the notion of the failure of Allende's government, the need of military intervention and the benefits of an authority like the one of General Pinochet and the members of the Military Junta. This strategy granted support and credibility to the regime, allowing them to keep spreading their power and start implementing changes in what Chile had been, while keeping the consequences of their actions hidden for all those who were not directly affected. The following sections will address these political, institutional, economic and social reforms and transformations that took place over the authoritarian government.

## **II- Institutional-Political changes**

As evidenced in the previous section, the ideology of the dictatorship was an intense rejection of leftist ideas, especially if they involved the reduction of private property. The authoritarian ideology was also based on contradictory aspects. For example, being apolitical even though their actions and decisions were political; bringing national unity, although there were direct actions to ban opposition. This may relate to the fact that General Pinochet and the members of the Military Junta did not have a government plan. This section will cover the transition from the coup to a more stable military rule that controlled the country for 17 years. This will be followed by the introduction of the institutional and political reforms made by the authoritarian regime that led to the continuation of their ideas and projects over democratic times. Where I will clarify the strategy used to alter the Chilean society permanently, constraining the subsequent rule.

### **1. The institutionalization of the new 'ideal society'**

The actions of the Armed Forces were initially thought as transitory to bring stability and power back to civilians (Chaparro and Cumplido, 1982). However, in 1974 Pinochet assumed as Supreme Chief of the Nation and presented his Declaration of Principles, where he stated the purpose of the regime was to rebuild Chile in moral, institutional and material terms. (Constable and Valenzuela, 1993; Rettig Report, 1993). The day before, the Military Junta had published their Guidelines for Action. The two documents did not match, thus evidencing discrepancies between the authorities of the dictatorship. Nevertheless, they both provided a social, political and economic plan (Chaparro and Cumplido, 1982; Valdivia, 2001).

In 1977, in an event organised by the Youth Front of National Unity [Frente Juvenil de Unidad Nacional, a political group formed by Jaime Guzmán in

1975 supporting the regime], Pinochet presented what came to be denominated as the Chacarillas' Plan. It was a long-term timetable of the future of the authoritarian regime and the eventual return to civilian rule. It proposed a series of dates that showed an intention of remaining in power until 1985 (Garreton, 1982; Oppenheim, 1993).

As a result, all over the authoritarian regime, democratic participation was almost completely halted, except for the consultation of 1978, and the referendums of 1980 and 1988. In 1978, with the purpose to show the legitimacy of the authoritarian regime to the international community after the UN condemned Chile for Human Rights abuses, Pinochet organised a consultation. There was no voter's registration, Chile was under a State of Emergency, opposition demonstrations were forbidden, blank votes were counted as in support for the government and those trying to say something against the regime were harassed. On the contrary, there was massive advertising supporting Pinochet's rule. Unsurprisingly, the consultation supported the authoritarian regime (Constable and Valenzuela, 1993; Oppenheim, 1993; Hilbink, 2007; Cavallo, Salazar and Sepúlveda, 2008).

Another key measure was to renovate the 1925 Constitution, still in place in the country. In fact, the creation of a new constitution was one of the strongest legacies of the authoritarian regime. One that remains until this day and has involved a great deal of debate. In 1973, Decree Law 1,064 created a commission to draft a new constitution. They presented their final draft in 1978. Decree Law 3,464 approved the text, which had been modified by General Pinochet. The Plebiscite of 1980 had the purpose of ratifying this new Constitution, and it was held in similar circumstances to those of the 1978's Consultation. The Christian-Democrats tried to organise opposition, but the coverage was minimum. Again, the result was as expected, the 'yes' won with 67%. The Constitution was implemented in 1981, and Pinochet gained eight more years in power, until 1988 (Garreton, 1982; Constable and Valenzuela, 1993; Vanden and Prevost, 2002; Lawson, 2005; Hilbink, 2007).

The new Constitution presented the future of Chile as a 'protected democracy', it meant limited popular representation, where any party with doctrines against the family, pro-violence, totalitarian or under a class-struggle paradigm were prohibited. Although it only referred to communist-based political parties, as those supporting the dictatorship were allowed. It reinforced the use of authority to 'protect' Chile from violence and ideology, and explicitly stated a new democratic order was to be authoritarian, together with integrating, modern and authentic social participation (Constable and Valenzuela, 1993; Oppenheim, 1993; Rettig Report, 1993; Lawson, 2005). A contradictory statement that exemplifies the attitude of the military regime. The document had also a strong impact in the democratic order of the 1990s, as the following subsection will demonstrate.

## 2. The transition to democratic rule: The legacy that determined the future of the Chilean democratic order

Political activity started to slowly reappear from 1983, when after an economic crash, opposition labour leaders called for a strike that started a continued period of massive protests with the participation of students and housewives (Constable and Valenzuela, 1993). This resulted in consequent increased repression, for example, creating the law 18,256 which punished those calling for public collective action in the streets (Rettig Report, 1993). However, it also led to a change in the interaction with the military regime, opposition media became more active and they united in the Democratic alliance. Even Jaime Guzmán, a strong supporter of the authoritarian regime and close to Pinochet, funded the Independent Democratic Union [UDI], a conservative right-wing party that remains until this day (Oppenheim, 1993).

By 1985 there was open pressure to end with Pinochet's rule, the Chilean people were demanding his resignation, and a group of 11 political groups with the support of the Church generated the National Accord for Transition to Full Democracy. The purpose was to reform the 1980's Constitution and to return to democracy (Constable and Valenzuela, 1993; Lawson, 2005;

Hilbink, 2007). However, after the attempt against Pinochet's life in 1986 by the Manuel Rodríguez Patriotic Front [Frente Patriótico Manuel Rodríguez, a group that had separated from the Communist Party], a new State of Siege was proclaimed, and all possibility of agreement was halted. The original date proposed by Pinochet in the new Constitution was to be respected.

*a) The 1988 referendum*

The 5<sup>th</sup> of October of 1988 was the date set for the referendum. There were two options. 'Yes' to continue with Pinochet's rule, and 'No' to open the door to civilian presidential elections to be held in 1989. The Constitutional Tribunal decided on an independent panel to count votes in order to respect the new Constitution and give legitimacy to their work and the result. Pinochet lifted the State of Exception and allowed exiles to come back. There was also support from the United States, providing funds to have people from each party in the voting tables, checking the votes count (Constable and Valenzuela, 1993; Oppenheim, 1993).

In 1987 registration opened for voters, and the government allowed all non-Marxist political parties if they collected 35,000 registered voters' signatures. 14 centre-left opposition political parties joined in the 'Concertación por el no' and campaigned to vote 'no' in the plebiscite. They were the targets of violence, from harassment to bombs (Constable and Valenzuela, 1993). Despite this, the 'No' won with 54,7%. Under these circumstances, the military agreed to return the political and administrative powers to civilians. Given the transition was decided in an administrative way instead of through revolution, it has been catalogued as peaceful for some, but also as shallow (Lawson, 2005). According to Biekart (2015), it was more a transition from authoritarianism than a transition to democracy. This, because the military placed certain conditions that have been termed authoritarian enclaves (Garreton, 1982; Lawson, 2005; Kennedy, 2017).



### *b) The authoritarian enclaves*

These enclaves set the permanent presence of the military in political life through the National Security Council, whose purpose was to provide advice to civil government but with veto power in representation of the Armed Forces (Garreton, 1982; Constable and Valenzuela, 1993; Oppenheim, 1993). They also included the permanence of the 1980's Constitution. The Constitution increased the power of private actors and property through the explicit focus on liberal economic rights (Valdivia, 2001; Hilbink, 2007; Budds, 2013; Hanbeom, 2013; Kennedy, 2017). It granted further powers to the Executive over the Legislative through the creation of designated Senators' seats (Oppenheim, 1993; Hilbink, 2007); and extra powers to the conservative right-wing, through the reform in the electoral system, which made it more restrictive and favoured majoritarian coalitions (Constable and Valenzuela, 1993; Kennedy, 2017). Pro-military judges were appointed in the Supreme Court to serve until their death, the autonomy of the Armed Forces was granted, and a National Council for Television was appointed in order to keep control over the media (Garreton, 1982; Lawson, 2005; Kennedy, 2017).

According to several authors, these measures, along with setting almost impossible majorities in the parliament to accomplish amends made the new constitution almost impossible to reform substantially (Garreton, 1982; Oppenheim, 1993; Vanden and Prevost, 2002; Lawson, 2005; Kennedy, 2017). Nevertheless, there were minor corrections based on agreements between the coalition of the conservative right-wing and the Concertación (Constable and Valenzuela, 1993; Oppenheim, 1993; Rettig Report, 1993). In 1989 Presidential elections were held again after almost two decades, and Aylwin, a Christian-Democrat representing the Concertación, was elected, giving birth to a new democratic order.

Nevertheless, these authoritarian enclaves marked and constrained the institutions, politics and economy of the new order directly. They made it almost impossible to bring any radical changes that altered the basic structure left by the military regime. Moreover, the transition had been the result of a peaceful agreement, and still attained the support of the 44% of citizens who voted 'yes' in the plebiscite (Oppenheim, 1993); the right-wing, even those who had openly participated in the regime, had not lost their political privileges. They remained active and representing all those who still valued General Pinochet's actions and the transformations he implemented (Ibid). In fact, the official understanding of the events that took place in 1973 and in the following authoritarian regime was not replaced by the new authorities. Thus, the mindset of the dictatorship continued into the democratic period (Borzutsky, 2017).

*c) Constrains to the functions of democratic institutions and political parties*

In a democratic order, the Congress started to work again. But, as it had been closed for the entire dictatorship, elections for new Senators and Deputies were needed. In these elections, the Concertación won 72 of the 120 seats in the Deputies' Chamber and 22 out of 38 in the Senators' Chamber. However, the authoritarian enclaves left nine appointed Senators, gaining control over the Senate despite election results. Some of them were important figures of the Armed Forces. Moreover, following the Constitution, Commander in Chiefs of the Armed Forces became Appointed Senators for life (Constable and Valenzuela, 1993; Oppenheim, 1993; Hilbink, 2007; Borzutsky, 2017). For example, Pinochet became a Senator in 1998, when his self-appointed role directing the military was over, and remained in such role until 2002. This continued until 2005, when appointed Senators were eliminated through a constitutional reform promoted by President Lagos in the third Concertación's government (2000-2006).

Here, it is key to have in mind that the Chilean legislative process involves the two chambers of the Congress: Deputies and Senators. A majority in both

is mandatory in order to pass new legislation. Therefore, law making still needed majoritarian approval from the right-wing, or at least the support of a big part of the opposition. This resulted in the blocking of all legislation that had not been agreed before or was considered too radical or altering the conditions left by the previous regime (Vanden and Prevost, 2002). Amongst the legislations stopped or at least considerably slowed, we can find attempts of constitutional reforms in the first two democratic governments, with Presidents Aylwin and Frei; but also with the request by members of the government, other congressman and Human Rights association to stop Pinochet from becoming a Senator (Hilbink, 2007; Borzutsky, 2017).

The Constitution also stated the implementation of the binominal electoral system, which acted as another tool to give advantage to conservative candidates to reach seats in the Congress. These seats represent districts: every district had two seats, and every party can present a maximum of two candidates; but for the same political party to win both seats, they need more than two-thirds of the votes instead of a simple majority. Otherwise, one of the seats goes for whomever obtained more votes, while the other seat is immediately placed to the party who reached the second place in the vote count, even if they have fewer votes than the second candidate of the same party that won the first seat. This implies that citizens vote for individual candidates, but the person elected depends on the candidate most voted for in the list most voted for. Thus, only one of the candidates was elected by majoritarian popular vote, unless the support for a given coalition was massive. The Concertación usually gained one seat, but they did not have enough votes for the second one, which was then appointed to the right-wing coalition, as they were the biggest opposition (Constable and Valenzuela, 1993; Oppenheim, 1993; Lawson, 2005; Borzutsky, 2017; Kennedy, 2017).

This system also promoted joining in two super-majoritarian coalitions (Borzutsky, 2017), given the little chances for small parties running alone. Furthermore, this system usually implied that the political elite did not renew easily. The tendency of Chilean politics towards the aggrupation of small parties in two big groups was strongly present for at least the period covered

in this research. In the first two democratic governments the Concertación remained strong, while the right-wing faced conflicts due to its own division (Oppenheim, 1993; Álvarez, 2014), the support of more neutral citizens towards the coalition that represented the new democratic order (Oppenheim, 1993), and the lack of legitimacy for all those who had suffered the violence of the dictatorship. However, by the third presidential election in 1999, the scenario started to change.

The first two democratic presidents had been from the Christian-Democrat party, while the Concertación candidate this time, Ricardo Lagos, was an ex-member of the Socialist party, now member of the Democratic party [Partido por la Democracia, PPD]. This brought crisis inside the Concertación, and eventually the retirement of the Christian-Democrats from the coalition. At the same time, the right-wing postponed their differences. The 'Pinochetist' discourse had lost strength in 1998 when he was detained in London, allowing them to join forming the coalition Chile's Alliance [Alianza por Chile], to support opposition candidate Joaquín Lavín, a member of the Democratic Independent Union [Unión Demócrata Independiente, UDI]. The party created by Jaime Guzmán that reunited the antidemocratic conservative right-wing. Lagos still won the election, but with a margin of less than 3% after a secondary process of election (Silva, 2001; Borzutzky, 2017).

This has been related to disappointment with democracy and the Concertación administration (Weyland, 1999) -based on how they handled the Human Rights' debt, and other elements such as corruption to be mentioned in greater detail below and in the following chapter; but also, to the fact that the right-wing left their conflicts and differences behind, joining in one super-coalition, adding their individual supports while the Concertación was starting to face crisis and division. Therefore, to group together could be considered more effective than working alone. However, this prevented radical positions (Kennedy, 2017), especially to the left, as the right-wing and the military had been left largely untouched by the dictatorship and posterior transition.

The lack of a radical position to the left was also strengthened by the changes in the political parties after the dictatorship. For example, the Socialist Party gave up on Marxism and the social struggle, turning towards a more centre-left position with a focus on rights and distribution, but not with the same emphasis as before (Vanden and Prevost, 2002); they even abandoned their old logo for a more neutral one (Álvarez, 2014). This was probably the result of the dictatorship's discourse, where Communism was associated to chaos, insecurity, loss of freedom, economic crisis and the 'enemy'. Despite this, Aylwin's government was considered as moderate for the Concertación, but as radical Marxism in the eyes of the conservative right-wing of the country (Hilbink, 2007).

Therefore, the Concertación did not want to be associated to an ideology that was strongly rejected by the opposition, but also feared by more neutral members of the community. As such, they united with centre-left parties like the Christian Democrats, the Humanists, and a less radical section of the Socialists; and they were clear in their focus on Human Rights and non-violent or direct conflict (Oppenheim, 1993). This left out of the coalition those supporting more radical leftist actions and ideas, for example the Communist Party, the only ones that kept the Marxist roots, despite distancing themselves from the radical force they had been in the past (Vanden and Prevost, 2002). The result of these institutional constraints but also political decisions was that the radical left was effectively banned from political participation, the centre became the new left and the radical right-wing remained in powerful positions, especially in the Senate.

#### *d) The strength of conservative authoritarian figures*

Besides this electoral and legislative strength of authoritarian ideas, Pinochet remained a strong figure, engaging in public recrimination of any criticism to his rule, ranging from Human Rights violations to cases of fraud by his own son. He was still the Commander in Chief of the Army and directed public demonstrations of military men parading in the streets, quartering troops in the city and even rattling sabres to put pressure over the government when

their decisions could be considered a risk for military privileges, or the legacy Pinochet wanted to leave in the country (Oppenheim, 1993; Lawson, 2005; Hilbink, 2007; Borzutsky, 2017). These actions had a clear message: Pinochet still had a great amount of power, he controlled the Armed Forces, and if the new rule seriously limited him and his closest followers, he could act. Moreover, in several occasions he verbally threatened democracy (Borzutsky, 2017).

Open support towards him remained at least until 1998, when his term as Commander in Chief of the army ended and he was detained in London. Moreover, up to 1998 the military retained a meaningful power over civilian rule, as they had not been prosecuted for Human Rights violations, and almost half of the population valued the previous regime as positive because it had 'saved the country and national economy'. Pinochet was permanently presented as a hero. Open criticism towards his actions and the regime had also immediate response from an important fraction of politicians and Senators as well. Therefore, their discourse was very much alive, despite the regime change (Hilbink, 2007; Borzutsky, 2017). For example, reports regarding the Human Rights violations faced strong mediatic and street demonstrations from both the political opposition and the Military, reaffirming their support for Pinochet's actions as a saviour of the nation (Oppenheim, 1993; *ibid*).

Conservative and authoritarian actors also permeated at a more local level. Chile is divided in Regions, and each one is subdivided in Municipalities, they are directed by a Mayor and involve a series of political positions and administrative staff. Before leaving the government, General Pinochet passed a series of legislations that made it harder to replace administrative staff, he also appointed the Mayors (Oppenheim, 1993). Therefore, Municipalities were also controlled by dictatorship supporters. Things started to change in 1992, when the first municipal elections were held. The support for the Concertación government was validated in this instance, as they won 53.30% of the municipalities. Nonetheless, the right-wing was elected in many Municipalities as well (29.80%) (Bunker and Navia, 2010), especially in

those that reunited the business and the political elite that supported the regime, who are the richest and most powerful people in the country (Álvarez, 2014).

*e) The ruling style of the new governing coalition*

Oppenheim (1993) describes Aylwin's ruling style in terms of conciliatory, moderate and privileging negotiation. The author highlights how the Concertación tended to compromise the views of their members and parties in order to work together, privileging democracy. For example, at the beginning, President Aylwin talked to General Pinochet in advance, looking to prevent open opposition and criticism (Borzutsky, 2017).

The style followed by the governing coalition was one that avoided confrontation and challenge, and was based on consensus, compromise and pre-arranged agreements (Constable and Valenzuela, 1993; Lawson, 2005; Álvarez, 2014; Tsukame, 2016; Borzutsky, 2017; Kennedy, 2017). This brought issues that decreased the trust in their ability to govern but also in democracy, as many of their actions implied the denial of the past, or a series of slow cautious reforms that at the end of the day did not bring meaningful changes; and instead respected or kept building over what the authoritarian regime had left in place (Lawson, 2005; Borzutsky, 2017; Kennedy, 2017).

Therefore, the conditions set by General Pinochet constrained directly the first democratic years; with most of the antidemocratic institutionalized features in place until 2005. The right-wing had been awarded with fixed positions in the Senate, obtaining a majority that could easily block new legislation that impacted on their interests. They also had the support of an electoral system that granted them a seat despite not obtaining majoritarian vote. At the same time, the Municipalities, that is, the local contact with citizens, were completely in their hands in the transition, and then quite a few of them remained in such position. Even the military maintained some of their veto power over civilian activities for years, impeding any open criticism to all the changes forced during the regime. In consequence, the right-wing had

not been delegitimised by the change, as they still had the support of almost half of the population.

### **III- The transformation of the political economy of the country**

After obtaining political control of the country in the early 1970s, the military expanded their grasp to the economy. Following from Garreton (1982), Oppenheim (1993) and Budds (2013) Chile was the first country to implement neoliberal public policies in 1975, becoming the most radical case of it as well. Market principles extended to all areas, such as education, labour, health, the pension scheme and so on, replacing state and social regulation (Huneus, 2000; Valdivia, 2001). By the 1980s most private companies belonged to five wealthy investment groups (Constable and Valenzuela, 1993; Lawson, 2005). This restructuration can be summarised as reducing the state, which refers to decreasing its power and reach, while giving it to private actors and institutions. This subsection will start with the imposition of a new model: Neoliberalism, followed by its consequences on daily life, the impact on a new way of interacting with the state and its permanence and legitimation over the transition to democracy in the 1990s.

#### **1. Neoliberalism: the implementation of a new model**

Since 1930, Chile had an economic model which depended on importing and industrialization under a well-protected and regulated market (Silva, 1993; Valdivia, 2001; Livingstone, 2009). President Allende had plans to reform it following the socialist agenda, increasing the power of the State through the expropriation of national and international companies (Wesson, 1982; Rackynski, 2000). However, business' owners and the Armed Forces were absolutely against such plan (Chaparro and Cumplido, 1982; Constable and Valenzuela, 1993). The first complains of the Military started with the



reduction of funds for them (Lawson, 2005). It was quickly followed by Allende's economic policies backfiring, which developed into a national crisis where inflation had reached 900%, and there was a 24,7% deficit of gross domestic product (Constable and Valenzuela, 1993).

At the beginning, there was no defined economic posture in the new authoritarian regime. However, eventually, it came to two main postures: The nationalists and the Liberalists (Valdivia, 2001). The first ones wanted to strengthen the Chilean State, albeit respecting private property. The focus for them was on making national companies stronger and privileging national production over the liberalization to international private organizations. The liberalists, represented by the Chicago Boys, inclined towards the promotion of international investment and free-market economy. This subsection will cover the fluctuating process that ended in the prioritization and implementation of neoliberalism, and its main consequences.

The Chicago Boys were a group of young economists from the Catholic University (in Chile), most of whom had followed postgraduate studies in the University of Chicago (in the United States). In 1972 they were asked to develop an alternative economic programme to the Popular Unity government, which came to be named 'the brick' due to its size. Early in the regime, the retired Captain of the Navy Roberto Kelly was appointed in charge of the Office of National Planning [Oficina de Planificación Nacional, ODEPLAN], he was familiar with the Chicago Boys. At the same time, based on connections and recommendations, Sergio de Castro, a leader of the group, became adviser of the Economic Minister, and later the Economy Minister and Finance Minister himself (Constable and Valenzuela, 1993; Oppenheim, 1993). Other members were given key positions such as advisors in the Central Bank (Valdivia, 2001).

However, the predominance of their ideas was not immediate. It involved a complex process that was only possible because they had the support of General Pinochet. Even after the free-market paradigm won the battle, there was still some rejection within the Government. General Leigh, for example,

opposed to the free-market paradigm, seeing it as radical. The Minister of Economy at the early times of the military regime also disagreed, despite working directly with De Castro (Cavallo, Salazar and Sepúlveda, 2008). However, in 1978 General Leigh was forced to abandon the Military Junta, and opposition to the most radical liberal ideas decreased, as he was considered the strongest nationalist of them (Valdivia, 2001).

The permanent rotation of positions inside the authoritarian government also helped to decrease the impact of critics to the model (Constable and Valenzuela, 1993; Cavallo, Salazar and Sepúlveda, 2008). At the same time, many key members of the Chicago Boys or people who were closer to their ideas, had accomplished high positions in different institutions and in the government, such as ODEPLAN, The Corporation to Promote Production [Corporación de Fomento a la Producción, CORFO], or in other Ministries (Montecinos, 1998). It was also facilitated by economic help from international private banks, institutions such as the World Bank, the Inter-American Development Bank, and the Nixon and Ford administrations in the United States (Constable and Valenzuela, 1993; Rettig Report, 1993). This because international economic help started making suggestions and adding requirements to the loans, such as fiscal reform, spending restraint, making cuts in the public sector, stopping subsidies and keeping wages down (Vanden and Prevost, 2002).

The initial assessment of the Chicago Boys regarding Chilean economy was about its excessive regulation, judging it as closed, with a tendency to inflation and paralysed in terms of growth. Their suggestions were to free prices, open the country to foreign trade and investment, encourage liberalization, promote natural resources exports, abolish labour laws, privatize state social services and companies, increase taxes and interests, reduce welfare and adjust it to the same free-market logic applied elsewhere (Chaparro and Cumplido, 1982; Silva, 1993; Montecinos, 1998; Huneuus, 2000; Raczynski, 2000; Valdivia, 2001; Vanden and Prevost, 2002; Lawson, 2005; Cavallo, Salazar and Sepúlveda, 2008; Livingstone, 2009; Budds, 2013; Hanbeom, 2013; Schild, 2013).

In the 1970s, in the middle of the economic crisis Chile was facing, the measures suggested by the Chicago Boys were partially implemented, as they did not have full support yet. Around 1974 state spending decreased, fiscal deficit reduced to 11% of gross domestic product, and inflation lowered to 375% (Constable and Valenzuela, 1993). However, they did not have the intended results with the expected efficiency, inflation was still high, real wages dropped and unemployment rose dramatically (Ibid).

In 1975, Milton Friedman, an academic and economist of the University of Chicago who promoted free market, visited Chile and told Pinochet the economy needed more drastic measures. Pinochet placed De Castro as Minister of Economy and the ideas of the Chicago Boys received the support to implement what was known as the 'shock plan'. National economy improved in what came to be called the 'Chilean Miracle' (Oppenheim, 1993; Silva, 1993; Valdivia, 2001; Lawson, 2005; Cavallo, Salazar and Sepúlveda, 2008; Budds, 2013). In that time, there was a drastic cut of public spending, private capital was stimulated, the banking system deregulated. The results were the elimination of fiscal deficit, the drop of inflation to 65%, the rise in production, a seven percent average annual growth, and the reduction of unemployment (Constable and Valenzuela, 1993; Oppenheim, 1993; Hilbink, 2007).

The power of the Chicago Boys only grew after that. Their policies brought massive improvement to the national economy and the support of supporters of the authoritarian regime who had been previously reluctant to their economic approach. The united encouragement for the neoliberal agenda is clearly visible in the 1980's Constitution, as it focused on economic freedom, private initiative and the reduction of the state, all principles that had not been present in the Declaration of Principles of 1974 for example (Rettig Report, 1993).

However, by 1982 the measures had backfired, foreign debt and inflation had increased dramatically, the same with unemployment; the family income had decreased; banks collapsed; industrial production dropped; and companies

went bankrupt (Constable and Valenzuela, 1993; Oppenheim, 1993; Lawson, 2005; Hilbink, 2007; Schild, 2013). Sergio De Castro was asked to leave his position, and the Government, against all free-market discourse, had to assume the responsibility over banks and companies to stop a full collapse of the economy (Constable and Valenzuela, 1993; Oppenheim, 1993; Hilbink, 2007).

The economy was then handed to Büchi, the new Finance Minister. He applied more flexible strategies, albeit still under a free-market logic, and until 1986 there was an improvement, but it crashed again in 1987 (Constable and Valenzuela, 1993; Oppenheim, 1993; Hilbink, 2007). Silva (1993) classifies the implementation of neoliberalism in three major stages, a gradual one, before 1975; radical at the time of the 'shock plan', which ended in the 1983 crisis, and a pragmatic neoliberal re-structuration. By then, the country had accepted the neoliberal paradigm, business blamed their own inability to adapt to the new dynamic context, and the new measures were built over a free-market logic (Oppenheim, 1993).

## 2. A reduced State: privatization and the disappearance of welfare

In the 17 years of authoritarian regime, there were two major stages of privatization. The first one in the mid-1970s, as part of the strategy that brought the 'Chilean Miracle'. The second one, was in the late 1980s, before the return to democracy. Both times the businesses were sold at bargain price (Constable and Valenzuela, 1993). Chile divested more than 400 public companies to private hands. The State sold more than 60% of the companies it owned. Although as it retained the main providers of the media, mining and energy, it still held 75% of Chilean production (Constable and Valenzuela, 1993). All the industries nationalised by Allende were returned to their owners or sold by 1978 (Oppenheim, 1993). Many basic services, like water, were now provided by private companies (Budds, 2013). At the same time,

welfare was cut, and state responsibility was reduced to almost non-existent (Hanbeom, 2013; Schild, 2013).

This neoliberal logic expanded to all realms, the health system was privatized, universities before free now asked student fees, and schools went from government to municipal responsibility, subject to the resources of the people living in the area. The authoritarian regime also implemented a labour reform which reduced the rights of workers and gave more benefits to companies (Constable and Valenzuela, 1993; Silva, 1993; Schild, 2013). Something similar happened with the pension scheme, now dependent on personal savings administered by private institutions (Valdivia, 2001).

Those who benefited the most by the new privatization of services were people closely linked to the Chicago Boys (Garreton, 1982; Constable and Valenzuela, 1993). For example, in terms of expropriated land, only 1/3 returned to their previous owners, but most of them were bought by people associated or with close contacts in the authoritarian government (Schild, 2013). Moreover, despite all the reduction in public spending in all fields, the budget for the armed forces grew dramatically in the first decade of the authoritarian regime. By 1988 the budget for the military was more than for housing, health and education all together (Lawson 2005).

The privatization of most state services, together with the new way of making politics of the authoritarian regime, erased most of the permanent communication means between citizens and the Government. There were no political parties, no representation, no activity of labour unions or community associations, as they had been explicitly banned. Even public meetings and co-participation between associations and politicians were explicitly condemned (Constable and Valenzuela, 1993; Rettig Report, 1993). The Armed Forces centralised the power of the State in such way that it was almost impossible for regular citizens to channel their needs and demands. There was no communication between citizens and those making the decisions and complaining could bring violent reactions from state agents.

### 3. The legitimization of neoliberalism in democratic times

When the dictatorship ended, amongst the series of conditions left in the authoritarian enclaves, Chile had to remain faithful to neoliberalism. Such condition implied the support towards private business entrepreneurship, self-development, liberalization and a reduced State all over the following democratic years. Nevertheless, the Presidents from the Concertación not only accepted the condition imposed by Pinochet, they also embraced it, keeping a central focus on macroeconomic stability, low inflation, exports, and active participation in the global market (Weyland, 1999; Raczynski, 2000; Vanden and Prevost, 2002; Borzutsky, 2017). For example, the government of President Frei continued the privatization of public transport, water and copper (Lawson, 2005).

The support for neoliberalism, beyond the conditions set by the military, can be understood as an element that linked the new government with the authoritarian right-wing (Weyland, 1999; Borzutsky, 2017). This granted them a tool for political negotiation despite not having majority in the Senate. For example, when the authorities presented projects to reform the Tax Law to the congress in order to generate more resources to address poverty matters, it would only be accepted if certain privileges were granted for the business elite, such as lower taxes or extra benefits (Oppenheim, 1993; Weyland, 1999). According to Chonchol (1996) and Weyland (1999) there was a conveniently adaptable conception of the State, as it was understood as a burden until the interests of the elite were at stake, then it was considered responsible to actively help them through financial aids, which had broader acceptance than social expenditures.

Moreover, as it happened in the authoritarian regime, that gained support and was encouraged to stop the crisis and bring economic growth, the new government was concerned about the damage it could bring to democracy to fail in this matter (Garland, 2000). The hypothesis seems to have some value when we notice that the support for the Concertación decreased meaningfully

at the end of the second democratic government, with President Frei, after Chile felt the effects of the Asian economic crisis of 1997 (Silva, 2001). This was visible in the small margin of victory between President Lagos and the Democratic Independent Union [Unión Demócrata Independiente, UDI, authoritarian right-wing party] candidate, Lavín in the 1999's presidential elections. This notion is strengthened when considered that in the next presidential election, in 2005, the Concertación won again, after the average growth in Lagos government was still around 5.3%, bringing two years of economic success at the end of his term (Borzutsky, 2017).

Furthermore, the permanence of Concertación governments for about 20 years despite some right-wing actors reaching a lot of support, could be partially understood by this. The economic performance of Chile in the last years of authoritarian rule and in almost the first decade of democracy was considered outstanding and prosperous (Montecinos, 1998; Sapelli, 2000). It has been described as worth reproducing, especially when taking into consideration the economic crisis several other post-dictatorship Latin American countries were facing (Oppenheim, 1993; Weyland, 1999). Between 1991 and 2005 Chilean economic growth was higher than the world average (Schmidt-Hebbel, 2006), with a 7.7 GDP growth under President Aylwin and 7.8 in the Frei's period (Borzutsky, 2017). The participation of the country in the global market grew, and with it the importation of policies and practices of developed countries (Duque, 2007). This led to a new and unknown strength and stability in terms of national and international economy (Weyland, 1999; Silva, 2004).

Therefore, in order to address the issue of legitimacy of the new democratic rule, approved by less than 60% of the population, the government focused on measures to keep the support of the elite and palliate the needs of the vulnerable population. This resulted in what came to be known as social market economy (Vanden and Prevost, 2002). This refers to the same old emphasis on liberal economy and privatization but mixed with increased spending to fight poverty.



This was possible due to the economic success Chile was facing, the prioritization of gradualist approaches, the decision to place social spending under fiscal responsibility, and a reform in the tax law made by President Aylwin, which granted important revenues (Weyland, 1999). It allowed the creation of new jobs and programmes to reduce poverty (Silva, 2004; Dammert, 2005 Borzutsky, 2017). By 1996, the number of poor people had reduced in more than 2 million people (Raczynski, 2000). However, the priority was still on macroeconomic growth, which meant the new state economic aids were few, directed towards highly specific groups, and in the shape of training or vouchers that required active demand by the users, for example funds to enhance individual capacity to overcome poverty (Weyland, 1999; Schild, 2013). According to Hanbeom (2013) policy makers sacrificed welfare in order to compete in the market.

Different authors coincide that these measures answered to compensatory purposes, with no broader notion of a national policy to address the underlying issues or improve people's needs, but only highly visible symptoms (Raczynski, 2000; Ditzel, 2003; Hanbeom, 2013). In consequence, even when the issue of poverty was addressed quickly and effectively (Álvarez, 2014), the levels of inequality in both income distribution and labour conditions stagnated or worsened (Weyland, 1999; Raczynski, 2000; Schatan, 2001; Silva, 2004).

The already hierarchical social organization was now unified by a strong entrepreneurship, which focused on private business and financial support. Their power strengthened further along the decade given the lack of qualified workers, employers' guarantees and trade unions after their repression during the dictatorship, and the political leadership of economists who supported neoliberalism (Montecinos, 1998).

Therefore, the democratic governments legitimized the neoliberal economic order imposed by the dictatorship. According to Gómez (2008), from this period onwards Chile can be described as a neoliberal advanced society, given its conservative politics (which tend to privilege right-wing and market



ideas over social guarantees), high media involvement, lack of political participation and social, economic and cultural fragmentation that led to individualist and competitive attitudes and practices. Citizens and their rights were now being built in terms of private consumption and their capacity to pay for them. This resulted in massive levels of consumerism (Lawson, 2005), which probably increased given the new liberties, new trade agreements and the overall image on an improved national economy.

#### **IV- Social changes**

Chile was split into supporters or detractors of the authoritarian regime, which led to new ways of social division. High representatives of the left-wing had been evicted from any influential position, including politics and academy. Many had also been prosecuted, forcefully displaced within the city, exiled, had needed to run away from the country, were politically imprisoned or murdered. Hence, this elite group was wiped out of any power positions during the 1970s and 1980s, which extended to the first democratic years if their ideas were radical. At the same time, those close to the Armed Forces and the military government had access to powerful positions and better economic deals to buy state property or develop their own business. The expansion of neoliberalism also increased the gap between these two groups. The economic power was concentrated in the conservative right-wing and resulted in the exclusion of vast groups of the population (Chaparro and Cumplido, 1982). This section will be dedicated to address how the dictatorship led to a new poor class and a new economic and political elite that remain until this day.

## 1. Marginalization of social groups: making a new poor class

Several authors highlight the dramatic levels of inequality, high concentration of resources and increased poverty in relation to the period before the authoritarian regime (Tsukame, 1992; Garland, 2000; Raczynski, 2000; Vanden and Prevost, 2002; Lawson, 2005). By the end of the 1980s the income of the wealthiest 10% had increased in more than 80% (Constable and Valenzuela, 1993), while over 40% of the population was poor (Schild, 2013). Condition also recalled by some of the interviewees who participated in this research:

*'I started working in the government in 1990. I'm from the generation that took responsibility of this country with a 43% of poverty' (C., 2017)*

*'Besides the dictatorship there was a very hard crisis that produced a huge amount of social problems: poverty, indigence, I don't know, Chile fell 14 points in the GDP' (M., 2017)*

During the dictatorship there was also a reform in neighbourhood distribution, which implied the relocation of people and the creation of new marginalised neighbourhoods, better known as 'poblaciones' [This is the plural world, when talking about one neighbourhood the word is 'población'] (Chaparro and Cumplido, 1982; Oppenheim, 1993). Some were the result of new land titles and building subsidies to battle poverty (about 30,000 families received the benefit), but others were forcibly removed (about 28,000). They were in isolated places, with poor commuting connections and access to services, and heavily guarded by the Armed Forces and the police (Constable and Valenzuela, 1993). They were the arena for major arrests, violent repression, and events such as raids, or being stopped in the street for questions (ibid; Rettig Report, 1993). Some of them, as población 'La Victoria', became widely known for their resistance to the authoritarian regime and the recurrent action of the Military to keep them controlled (Schild, 2013).

These sectors acquired a dangerous reputation and became avoided. This impacted in the future of the families located there. Their properties lost value, and the stigma of belonging to a given población started to grow. It was also harder to find schools and health services to attend, and as people had been impoverished by the change, and many lost their jobs due to political affiliations or in the economic crisis of 1977, 1982 and 1987, there were no private resources to improve the area, and no State investment either (Raczynski, 2000).

The situation worsened by the new culture dependent on credit that had led people to massive debt (Lawson, 2005). For example, according to the Human Development Report of the United Nations Development Programme (1998), in the 1980s Chile had almost three times the number of cars people had in European countries such as Germany 30 years earlier, when they were at a similar level of income. This situation made the gap between rich and poor even more evident. In fact, several authors highlight the dramatic inequality of Chile in both authoritarian but also democratic times (Oppenheim, 1993; Garland, 2000; Vanden and Prevost, 2002; Dammert, 2005; Lawson, 2005; Borzutsky, 2017).

The result was the creation of vulnerable groups and poverty. Their isolation contributed to the invisibility of their situation from a State that denied help. In fact, business owners, the old richer right-wing, and thus most military regime supporters lived in other areas of the city. In Santiago, at least, this meant living in specific communalities (Las Condes for example). In those places the presence of the Armed Forces disappeared quickly after the coup, and the only source of information about Chilean reality was the media and its official version (Constable and Valenzuela, 1993). This may explain why there are people that to this day believe the violence of the military did not happen. Moreover, under the neoliberal understanding of individual success, poverty could be considered the result of failing at performing properly or laziness, while wealth was the consequence of knowing how to play under the rules of the new game. Under this logic, there is no space to recognise the role of opportunities, access and facilities to reach the position they had.

Therefore, the situation of the marginalised continued worsening, and those who were in control kept their distance.

## 2. The birth of a new elite

After the coup, the key governmental positions were filled by members of the Armed Forces, or by young technocrats like the Chicago boys, but not by the old conservative right-wing proprietary elite. The Military criticised them for privileging their own greed over what is best for the country, and for falling into the polarized political conflict (Constable and Valenzuela, 1993; Cavallo, Salazar and Sepúlveda, 2008). Therefore, they did not represent the 'apoliticism' that was so relevant for the new authorities. It became soon clear that they were not to have any special privileges (although they were at least protected from direct prosecution and human rights' abuses). Moreover, as the authoritarian regime was a time of rapid, sudden and dynamic economic changes, some of the old business owners were left behind in economic terms as well.

The new civilians in power have been identified to come from two big groups which according to Huneeus (2000) can be considered as just one: The Gremialistas or the non-democratic right wing and the Chicago Boys or the neoliberalists. The Gremialistas were a group with political participation at Students' Federation level in the Catholic University (the same institution where most of the Chicago Boys studied, and about the same time as well). Amongst the key figures of this movement we can find their funder, Jaime Guzmán, who participated in the authoritarian regime advising General Pinochet. He wrote the Declaration of Principles of 1974, was one of the masterminds behind the 1980's Constitution, and funded the UDI, the authoritarian right-wing political party working until these days. Miguel Kast was another key figure of the Gremialistas, he worked in the Office of National Planning [Oficina de Planificación Nacional, ODEPLAN]. Through him, a series of regime supporters were benefited with state scholarships

abroad to pursue studies in economics and finance to apply back in Chile. The agreements were mostly made with the Catholic University, which had a more conservative tradition and was the birthplace of the Gremialistas (Huneeus, 2000).

They were characterised by their higher education, a clear focus on growth through economic liberalization, the reduction of the State, national modernization and efficiency. They also shared with the military their despise for socialist and communist ideas, the focus on private property, a conservative and predominantly religious vision of the world, a general discourse of being apolitical, and rejection towards democracy (Chaparro and Cumplido, 1982; Constable and Valenzuela, 1993; Rettig Report, 1993; Valdivia, 2001). The result was the generation of a new elite.

This new elite did not question Pinochet's decisions. Most of them have been described as omitting or ignoring the Human Rights violations, accepting violence as it provided the context to implement their ideas without opposition (Chaparro and Cumplido, 1982; Huneeus, 2000). For example, Jaime Guzmán openly expressed his rejection to participative democracy (Valdivia, 2001), and his support to States of Exception under the control of the Executive power (Huneeus, 2000).

This generated a group of people firmly set in power and directed towards the same goal. Moreover, given how the authoritarian regime ended, through agreement instead of rebellion, the new elite could continue into the democratic political landscape of the 1990s. According to Constable and Valenzuela (1993) this allowed mediocre figures to reach positions of power, leading to a cult of privilege based on narrow access, connections and blind supports towards Pinochet's ideology and actions.

The lack of experience and preparation of the Armed Forces to direct and administrate a country helped these civilians to reach powerful positions in the regime structure (Chaparro and Cumplido, 1982; Cavallo, Salazar and Sepúlveda, 2008; Budds, 2013). The Gremialistas provided them with a

political plan, and the technocrats (the Chicago Boys) with an economic strategy.

Despite civilians accessing power through different means, eventually they all wanted the same. After the coup, they all worked towards a free-market economy, the liberalization from state controls to private property, the reduction of social spending and the banning of communism, socialism and opposition towards their measures, regardless of the means and the negative consequences of the implementation of their ideology (Chaparro and Cumplido, 1982; Huneeus, 2000).

By the time the military regime ended, the Gremialistas and the Chicago Boys were in central positions both inside and outside the government. They were the new economic elite, strengthened by influences, greater access and internal information of future decisions (Garretón, 1982). At the time of the transition to democracy they had a solid network that carried on to democracy, and into the next generation of right-wing politicians. Moreover, they controlled banks and companies that used to belong to the State and were now private. In consequence, Gómez (2008) highlights how political power rested only in the hands of the elites, while the rest of society felt unrelated to it, with no place or space for participation, turning citizenship into an issue of market involvement.

The result was what Iturralde (2010) has termed as 'democracy without citizenship'. Marginalised groups remained that way, and the benefits of the new Chilean development remained within the elite that controlled both political and economic power together. This, in turn, reinforced the strength of private figures and institutions that controlled the market, legitimising their power under democratic rule, over civilians' active participation in the discussion. For example, in the 1990s the World Bank stated the need to reform the national legal bodies in order to make new agreements. Soon after the reform of the Chilean Penal Procedure was launched (Schild, 2013).

Furthermore, the different weight private institutions and/or foundations had can also be understood in terms of the connections the owners, creator or

directors of those institutions had. As it had happened during the dictatorship, what mattered was to have a close connection with the elite. If someone knew the people in the top they could be heard. For example, Paz Ciudadana is a foundation created by Agustín Edwards Eastman the owner of 'El Mercurio' (the newspaper that supported the dictatorship), after his son was kidnapped. The foundation intended becoming the greatest reference regarding security through strategic alliances with public and private spaces and the media (Folch, 2002). By the Presidential elections in 1999, Paz Ciudadana had become a central actor in the new security policies of the Concertación governments, associating with the Interior Minister and launching programmes together, such as 'Comuna segura, compromiso 100' [Safe neighbourhood, 100 commitment] to finance projects to prevent offending (Ibid; Tsukame, 2016). Its political influence was actively highlighted by most of the participants in this research. They emphasized the key role the foundation had in the reform process of the Juvenile Justice System, despite having no direct experience with young people in trouble, a strong ideological bias, and having made mistakes with their data. All elements that will be addressed and evidenced in the following two chapters.

Nevertheless, the influence of Paz Ciudadana is particularly associated to its connections with the elite, as other grass roots institutions that had had a key role in the last years of the dictatorship found themselves with no influence (Oppenheim, 1993). This was explained by one interviewee as the result of the many needs that needed solutions when democracy returned, stopping smaller grass roots organizations, or with less political connections, to coordinate efforts as they had done in the past: *'The organizations were reorganising, many of them surviving with huge pressures and with emergency states everywhere, not only with institutionalized children, but also in other highly complex and painful sceneries. That resulted in that sometimes we came together, acted together and then disassociated; and we lost presence'* (O., 2017). But it could be more related to Lawson (2005)'s analysis, stating Chilean democracy exists on the base of elite pacts, in this

case about the maintenance of the market economy, which of course leaves no space for actors and demands outside this logic.

#### **V- New interactions between citizens and with the State: The making of an 'apolitical' society**

All through this process of socio-political transformation the values and interests of the Chilean society were changing and were now in line with this social market economy. The focus was on individual capacity to overcome poverty and triumph in a world where those successful had access to greater goods. As such, economic stability was a greater concern than Human Rights. Constable and Valenzuela (1993), highlight, for example, how some people support the dictatorship up to this day because it brought them wealth, while communism was associated to scarcity, even despite there being worse economic crises during the authoritarian regime itself.

Moreover, as now expectations of consumerism were high and there was great inequality in terms of access, the inability to participate in the market as much as desired led to part of the population feeling left out or frustrated (Weyland, 1999; Tsukame, 2016). The predomination of modernization, individualism and consumerism replaced the political interests that had characterized Chile in the past (Borzutsky, 2017). Social concerns were privatised (Álvarez, 2014) and Chileans withdrew into their private lives (Weyland, 1999). Citizens did not count on the support from the State, and it came to be associated to failure to provide, dependency and laziness instead of basic needs to be granted. The focus was now on personal education, training and jobs that could transform individuals in active members of the market, instead of political or social activity, and with that, private property grew in personal value.

Some other authors (Chaparro and Cumplido, 1982; Garreton, 1982; Wesson, 1982; Schild, 2013) highlight how this new individualism can be in



fact considered the result of the successful strategy to stop citizens' political participation. Before 1973, Chile was characterised by an active democracy (Chaparro and Cumplido, 1982; Wesson, 1982; Constable and Valenzuela, 1993; Oppenheim, 1993; Rettig Report, 1993; Huneeus, 2000, Vanden and Prevost, 2002; Lawson, 2005). However, through the import of market principles to politics, collective processes of participation and decision became individualised (Garreton, 1982).

Moreover, the Armed Forces had launched a strong propaganda against politics. They presented themselves as a better alternative (Hilbink, 2007), and repeatedly emphasized how Chile was not ready for democratic civilian rule. The quest against citizens' active political involvement was reinforced through the high levels of repression and coercion performed under the appearance of legality and national agreement. Garreton (1982) associated this violence of the military with the specific purpose of eliminating the previous social and political order, by stopping collective action and blocking their channels of communication with the State. Talking about politics had become a risk and dissenting openly from the government could bring harsh consequences. To this, we need to add the presence of undemocratic processes such as the referendums that took place during the authoritarian regime. For example, in the plebiscite of 1988, most Chileans claimed they were going to vote 'no' to Pinochet, however, most of them also believed he was going to win nonetheless (Constable and Valenzuela, 1993).

According to Chaparro and Cumplido (1982), the strategy was successful in demobilizing and inactivating a big part of the Chilean society that used to be strongly involved in political life and civic duties. All this led to hopelessness and mistrust regarding the effects of future political participation. The result was the distance from political life in the new generations, who rarely discussed politics and stopped participation at university level, as elections of new student's representatives had also been banned during the dictatorship (Constable and Valenzuela, 1993; Huneeus, 2000).

Organised activity, which used to be a common feature of the Chilean society was thus lost. This was amplified by the lack of coordination in the opposition, marked by the conflicts between political parties and radical postures before the coup, and the shifting between more aggressive and more pacifists means of fighting authoritarianism (Chaparro and Cumplido, 1982; Oppenheim, 1993). Following from Lawson (2005), the spaces to create collective identity were eliminated, leaving just informal uncoordinated means. Thus, the new way of becoming citizens was through individual participation in the market.

The legacy of the dictatorship in this matter was so strong, that even when the democratic times returned, citizens' involvement in politics and participation in electoral instances remained low. The low participation was officially recognised around 1997, the same year Chile faced an economic crisis after the boom it had been experiencing for the last decade (Weyland, 1999; Silva, 2001; Álvarez, 2014). Chile had become more pragmatic and individualistic (Oppenheim, 1993; Silva, 2001). The distant attitude to politics that Chilean citizens adopted was strengthened by corruption scandals in the first democratic years, where resources had been stolen or mishandled (Cleuren, 2007). After that, politicians came to be measured in administrative and managerial aspects. Politics became less about ideology, officially, and more about what politicians could convince citizens they were doing. This was specially promoted by the right-wing that had maintained the 'apolitical' discourse all over the dictatorship, and then imported it to democratic times (Álvarez, 2014). The result was little trust on political parties, the great majority of juveniles stopped participating in electoral register or voting, and as the years progressed more people felt disenchanted on the new democracy and the new elite (Weyland, 1999; Lawson, 2005).

To summarise, the division of society, the actions of the DINA, the control of the media, and the creation of new neighbourhoods that separated those against from those in favour of the authoritarian regime erased the old solidarity and trust amongst citizens. Anyone could be a Marxist or a spy of the government. This was increased by the permanence of the authoritarian

elite into the 1990s' democratic government, and the strong prevalence of authoritarian institutions and ideas. There was no interaction between citizens and politics anymore beyond the moment of the election. The communication channels had been closed and power remained in the elites controlling the market and politics. This led to a strong imposition of the status quo, while there was a weakening of social capital, cohesion and collective identity (Dammert, 2005). Therefore, Chile reached democracy in 1990 in a context where individualism, fear, distrust, concern over economic issues were high, and the uncertainty of the new landscape could only increase those feelings. The following chapter will analyse how this particular context led to the birth and development of concerns about crime and security, which resulted in growing demands of a Juvenile justice reform.



## **Chapter 5: From no one's concern to a national problem: how Juvenile Justice and the need of a reform rose to the centre of national debate**

With the start of the 1990s, Chile had to face a series of changes driven by a key element: the transition to a democracy built over authoritarian institutions in a modern globalized world from which the country had remained nearly isolated for over two decades. This meant the Chilean context was shaped by the local conditions of this new setting, such as the authoritarian enclaves that allowed supporters of the dictatorship to remain in politics, but also influenced by global trends like the fluctuation of international markets and their impact on national growth or crisis, which in turn reinforced the inequality left by the authoritarian regime. The result was a strong anxiety and fear regarding the past, present and future of Chilean citizens. In consequence, the political elite needed to regain the trust they had lost from the citizenship, while addressing national and international pressures regarding the debts from the dictatorship and the need of a clearer and more stable future.

Under these conditions, crime in general and youth offending in particular became the scapegoat for social concerns. There was a reductionism towards crime control solutions to deal with the socio-political problems brought by the two radical alterations Chile had lived in a relatively short gap of time (from democracy to authoritarianism in 1973, and to democracy again in 1989). As a result, security positioned as one of the key worries of Chilean citizens by the end of the first decade after the dictatorship. Offending was among the top three concerns of Chileans, while fear of crime became more important than job insecurity or economic stability by the 2000s (López, 2000; Dammert and Lunecke, 2002; Duce, 2004; Dammert, 2005). It was in this process of national reorganization that massive criticisms developed against the existing Tutelary System, and a new focus on how to deal with juveniles was born.

According to some interviewees, the focus on juveniles increased dramatically with the appearance of crack in the streets in the late 1980s and

early 1990s, in the words of one participant: *'in the transition to the 1990s the crack comes in and generates problems, I'd say, in the whole country, especially in poorer sectors'* (O., 2017). For politicians, it was a big part of the explanation for their offending behaviour, as the words of Deputy Guzmán in the Historia de la Ley 20,084 evidence: *'We know it is drugs that makes people be more expandable and with greater levels of aggressiveness'* (2005:1035). However, there is not much evidence regarding the levels and demographic characteristics of substance misuse. Therefore, for some of the participants in this research, the issue of drugs was more generalised moral panic than anything else, as the words of J. (2017) illustrate: *'At some point everyone went crazy in this country with the idea that everything was due to drugs consumption'*. Moreover, to deal with this issue the government created in 1990 the National Council for Drugs' Control [Consejo Nacional para el Control de Estupefacientes, CONACE]. Hence, the widespread concern about drugs does not explain a new Juvenile Justice System. Why did it change then? Why a system that had not been seriously questioned in more than 70 years became abruptly *'repressive'* (K., 2017), *'abusive'* (P., 2017), *'punitive'* (Deputy Bustos, 2004:233), and a *'failure'* (Deputy Rossi, 2004:245)?

The purpose of this chapter is to analyse the timing of the reform, how did Chileans come to be concerned about youth offending to the point they decided to radically transform a system that had been in place for over 70 years? I will argue that the reform of the Juvenile Justice System was an attempted solution to address legitimacy concerns, international pressures and represent the Chilean society that was being rebuilt, but under new rules.

To evidence this, it is necessary to address a series of contextual elements interacting over the 1990s and early 2000s. To do so, I incorporated quotes from the interviews and the documents analysed that allow to illustrate the reality of the time, including the perceptions and concerns over the matter. Those documents are the Historia de la Ley 20,084, the annual speeches of the Concertación presidents at the time and the government programmes of the candidates for the 1999 and 2005 presidential elections.

In terms of structure, I will start by referring to the social insecurities and uncertainties that came with the transition to democracy and the social conditions in which Chilean citizens had been left. This will be followed by addressing the need to legitimate the democratic order, which faced precarious and fragile conditions. In a different section I will comment on the influence of international pressure. Finally, the critiques and sense of failure of the existent institutions of justice will be analysed. It was the confluence of all these elements that transformed the pressure to reform into priority.

## **I- Social insecurities and uncertainties**

Under the new democratic order Chile had to face the fears of the past, brought by the imposition of the rules of the Armed Forces by force, but also the fears of the future consequences of the society the military had built. Moreover, change on itself was a reason for anxiety. Chile went from a small and poor country in the 1970s to an active open economy in a globalised world, participating in markets of places many had never even heard before, and in the middle of a technologic boom. The people who grew during the 1960s, 1970s and 1980s saw a completely different society from the one of the 1990s. The change had been fast and with little time to adapt and little power to have a voice in the direction these changes were following. Globalization and technology had reached the country and taken it by surprise, with not enough time to adapt to them, as the words of President Frei stated during his rule: '*The speed of the economic and social progress contrasts with the delay in our political functioning*' (President Frei 1999:64).

At the same time, over the authoritarian regime, Chile had radically turned to neoliberalism. This brought a change in national interactions, permeating from institutions to underlying logics and understandings of the State, citizenship and even young people. National priorities and values together with public and private services had been modified under this new paradigm. The result was a growing anxiety and feelings of insecurity which were

redirected from issues such as unemployment, lack of state support, loss of community life, and the individualization of responsibilities towards people's behaviour, a logic that seemed to resonate in the country as all over the dictatorship all social problems were deviated to the actions of a few (the communist for example).

In the new democratic times, Chile was still trying to find some balance and stability. There was a contrasting set of concerns and fears regarding an impoverished, austere past and an unpredictable and uncontrollable dynamic future. The present section intends to address the weight of these old fears and the new anxieties and uncertainties, and how the control of youth became the solution.

#### 1. Hangovers of the authoritarian regime: Fears about the past

Once the authoritarian regime ended, people still had to face all the fears they had carried through it. Chile had been left with a 40% of poverty, a growing inequality (Schild, 2013), and with a series of basic needs that needed addressing. This context can be summarised in the words of one interviewee: *'There were issues of scarcity, emergency state, common pots, having to supply in poor and excluded communities [...] issues of education, basic health, care, entertainment, and basic things like roof and food'* (O., 2017).

Moreover, 1990s' Chile had less government protection for workers and restrictions and controls over exploitative practices than before the authoritarian regime. The workers Unions that had helped to maintain and expand their rights had been disbanded or severely limited, workers' rights had been reduced. It took years of Concertación governments to see some changes to guarantee a basic level of security to employees. For example, the 1987 Working Code of the country was reformed in 1994, and then again through a Decree Law in 2003.



In consequence, the economic situation, unemployment and inequality were in critical conditions after the authoritarian regime and over the first democratic years. What is more, poverty and the economic crises since the early 1970s had left a clear mark, and they were a central reference topic among politicians, as President Frei highlighted in his national speech in 1999: *'What maybe Chileans feel more directly: the increase in unemployment'* (p. 6). Or how Lagos commented on his government programme when running for President that same year: *'The economic crisis multiplies the insecurity of the families, and makes them feel anguished, that once more the country is turning its back at them'* (1999:1).

To summarise, citizens had been abandoned to their own luck, access and opportunities while all the means had been taken away from them and concentrated in the hands of a few. Their networks had been cut; mistrust had expanded, poverty and inequality predominated. Therefore, citizens did not necessarily feel as part of a community anymore. The social capital identified by some authors who talk about Chile before the authoritarian regime seemed to have disappeared (see for example Constable and Valenzuela, 1993; Oppenheim, 1993; Dammert, 2005; Borzutsky, 2017). The 1988 referendum could have united people for a cause, but it had been decided and coordinated by the elite, and it had ended evidencing a national division. Thus, it had returned democracy to citizens, but not their previous civil and community involvement.

The risks of this unequal landscape, together with the lack of social cohesion left by the authoritarian regime were recognised by the new authorities. And slowly, as the decade progressed, they started being connected to crime, as the words of Lagos in his presidential candidacy evidence: *'With social inequality, frustration grows, and discouragement, and distress. Crime grows too. Solidarity, respect and braveness become weaker'* (Lagos, 1999:2). The need to develop a topic to engage the community was key, because following from the landscape presented in the previous chapter, Chileans had distanced and detached from politics, having little trust in the outcomes of their participation.

Therefore, to focus on crime and justice provided the political elite, both the Concertación and the authoritarian right-wing, with a tool to gain the support of the citizenship. If they managed to provide security, to soothe the fears and to grant stability, they could obtain citizens' votes. However, if they failed, the support could be redirected towards the opposing coalition. The fear of the population and the displacement of their support towards those who offered concrete solutions was highly visible in the Major elections all over the decade (Álvarez, 2014). The strategy is also visible in the government plan of Lagos, as he used it as a way to engage with those who felt vulnerable:

*'We Chileans know that when the State weakens the rule of the strongest predominates. Only those who have the personal means to defend themselves, to buy their health, buy the education of their children, housing, prevision and even security for their family remain standing. The rest remain doomed to save themselves as they can with their scarce resources' (1999:2)*

To this, we need to add the fear of going back to the authoritarian regime, at least at the beginning of the 1990s. The past was glorious for some, but for most it represented poverty, fear of the Marxist threat or of the Armed Forces and the State, people dying and disappearing, the lack of knowledge and understanding of what was going on, the prohibition to speak. However, democracy had failed Chileans in the past. There was no way of promising it would never happen again. Especially after the demonstrations of the Armed Forces at the beginning of the decade, or when so many of the political figures kept being the same of the old times; with General Pinochet still in a powerful position for example. The distrust towards the political elite increased by a few national events of corruption that brought questions over the legitimacy, safety and trustworthiness of modern times (Álvarez, 2014). Corruption reached political discussion as well, as it influenced the mood of the electorate and fuelled the opposition. This made it even harder to feel confident of the strength of the new order and displaced some of the attention needed by topics such as social precariousness towards mutual critiques from political actors and reasserting each other's roles, as the words

of President Lagos show: *'Sadly, there are those who make efforts day and night in promoting negativism. They show us a dark country, pessimistic, a country that has nothing to do with the efforts each of us and all of our compatriots are achieving to come through'* (President Lagos, 2003:3).

Moreover, with democracy, freedom soon became a conflicting issue. The term had been vastly used by the authoritarian regime talking about economy. But personal freedoms had been highly repressed. Now, suddenly, where people could not leave their homes after certain hour, they could stay in the streets all night. This brought tension over the actions of the other citizens they could not trust, negatively impacting over their tolerance to actions that, after so much oppression and control, now seemed disruptive, as one interviewee put it: *'It is hard to be tolerant, so it is better for the law to put some order; the pacos<sup>6</sup> come and solve things, the law comes and say something'* (E., 2017).

This exemplified the loss of control over a society that had been overly restricted, especially in marginalised neighbourhoods, where it could be easily transformed into 'disorder', leading to the questioning of authority (from parenthood to the State). Their behaviour could also lead to questions about morals and values of those families that allowed children to be outside, a practice probably abandoned by many families in times of socio-political unrest. A similar scenario has been described by Pearson (1983). He pointed out the effect of the democratization of public spaces, especially the marginalised sectors of the population, where they generate more tension and fear, together with demands of more scrutiny and a stronger authority. It is not surprising then, as the same author describes, that the population turned the insecurity they felt in other aspects of their lives towards the behaviour of juveniles. As it was more visible and accessible. The argument seems to make sense in the Chilean reality as well, as there was a

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<sup>6</sup> Informal term to refer to the armed police. Their official name is Carabineros. For some people it may be an offensive or derogatory term, although that is not necessarily the case. Very common in people who are more critical about the role of the institution, and uncommon in families of Carabineros or conservative families who supported authoritarian practices.

strengthening of legal actions against juveniles at the beginning of the decade (Cortés, 1991). Juveniles were a population that could be controlled.

Public demonstrations were a specific element that brought conflictive views. They were a right. But they were also associated to uncivil, violent and disrespectful actions, as the reaction of the President of the Senate to the public demonstrations that took place in the 1999 annual speech of President Frei in the Congress illustrate: '*The public force goes immediately to evict those who are protesting! This is a disrespect to democracy! We need to look for the unity in the country, not the conflict! Give the example!*' (President of the Senate Zaldivar, 1999:1-2). People speaking their voice generated fear, anxiety, the need to control.

Therefore, this freedom had to be adapted to a society that was not so open anymore. The Concertación government identified this social concern, and addressed it in more than one occasion: '*Our democracy evolves and that's why our freedoms are more solid*' (President Frei, 1998:1); '*We are not afraid of freedom!*' (President Frei, 1998:27). It became something that needed to be improved in order to transform Chile in what the political lead of the Concertación wanted: '*A country more open to the world, freer and more tolerant in its democratic coexistence*' (President Frei, 1998:35).

## 2. Anxiety over the future

Eventually, the fears of another coup and going back to the past receded. The figure of Pinochet was losing strength, and the political class seemed to have found a balance. This balance was probably partially built in the conciliatory political strategy of the Concertación and the lack of prosecution for the Human Rights' violations. Moreover, the national situation started to improve, such as employment for example (Constable and Valenzuela, 1993; Oppenheim, 1993; Lawson, 2005; Hilbink, 2007; Schild, 2013). However, Chileans were still anxious about the future.

For example, there were still risks of economic crisis hitting the country. As explained in the previous chapter, the economic strategy adopted by the Concertación governments was conservative. It represented neoliberal principles and values but took protective measures to reduce the negative impact of international markets. The strategy also involved keeping social expenses low. In consequence, citizens had little support to overcome their personal situation. Privatization had reduced their access to the means of social mobility as well. The result were widespread feelings of insecurity over conditions citizens could not control, such as:

*a) Modernity*

With the economic policies of the dictatorship and their expansion in democratic times Chile had reached modernity. This was accompanied by a general perception of national success promoted by the Concertación Presidents. For example, regarding the access of technology by President Lagos in his annual speeches: *'We have the greater number of computers per head in Latin America'* (2000:5); *'Ten years ago only 54 percent of households had a fridge, nowadays 82 percent has one'* (2003:4). To possess the last technologic commodities had become a symbol of social status. However, this progress was not for all and it often left many families indebted (Lawson, 2005). Hence, the possibilities to belong to the general community for those with no access to the new definers of identity and social hierarchy had been severed. It is not hard to imagine this situation fuelled feelings of exclusion and hopelessness.

*b) Globalization*

Once globalization arrived to Chile (after the country opened to contact with the outside world), the risks associated to it expanded quickly, especially in terms of economic security, which was addressed directly by Bachelet during her candidacy for presidency:

*'In Chile and in all countries that globalise the opportunities are multiplied, but at the same the risks for people also increase. Thus, the strong request of a*

*more welcoming country is born, one which is able to reduce risks and the economic insecurity that impacts on wide sectors of the population'*  
(Bachelet, 2005:9-10)

The government treated the future of Chile as openly and directly influenced by the outside world: '*The globalization of the economy and communications are putting an end to our mindset of island and finis terrae, meaningfully influencing our paradigms of reference and action*' (President Frei, 1995:31). The development of feelings of insecurity and uncertainty under these circumstances is not surprising, as other researchers and the broader literature have found similar convergence of events causing similar feelings (see for example Garland, 2001 or Cavadino and Dignan, 2006).

At the same time, the new access to television, cinema, and eventually the internet opened citizens' homes to the wide world, especially now the media was not controlled by the authoritarian regime anymore. Therefore, fear increased with events in other nations that were now watched live. For example, the 2001 attack on the World Trade Center in the United States, which happened the same day of the anniversary of the coup: September 11<sup>th</sup>. President Lagos referred to it in the following terms: '*The beginning of the 21<sup>st</sup> century is marked by uncertainty and fear*' (President Lagos, 2002:3). In consequence, the sudden jump to a modern globalized world brought a sense of lack of safety over Chilean citizens.

### *c) Marginalization and precariousness*

As shown in the previous chapter, many families had been forcefully isolated by the Armed Forces, relocated within cities, their chances of finding jobs reduced together with their access to health, education, food, even green areas and public transport. Their neighbourhoods had become stigmatized, their living conditions reduced and with few chances of improvement as the wealth was concentrated somewhere else. Their possibilities of overcoming their situation, having access to satisfy their basic needs, and to be considered as citizens in the same quality than those living in other areas of the city were limited. Moreover, the same poverty in which many citizens had

been left and the reduced role of the State in work regulations kept the power of Unions away. 'Problematic' workers could be easily removed from their positions, existing a queue of desperate people waiting for a chance to make a living. There were, thus, many reasons for the Chilean population to feel worried about the future. For some it meant the lack of prospects, for others the risk and permanent struggle to avoid falling back into what they had managed to leave behind, and those who never had faced such conditions were probably scared of ever experiencing isolation and deprivation.

These concerns were increased by another of the many consequences of the dictatorship: the individualisation of community life. The Armed Forces had spread mistrust through the secret actions of the DINA, and the national conflict had divided the Chilean society according to their alliances, political parties and the side they had supported since the 1970s. That had reduced the implicit trust in other members of the community. What is more, with the forceful displacement of groups of the population they had lost the local networks they had. They had been left impoverished, fearful, and alone. There were also few resources to generate a new sense of community, as during the authoritarian regime gatherings were prohibited, and there was a curfew that stopped people from using public spaces in between certain hours.

The solution to stop being part of the marginalised lot and become part of the privileged society that had some sense of security in modern Chile, was to become active participants in the market. However, the chances were scarce. The new aids created in democratic times were directed towards very specific population under long bureaucratic regulations, and the focus was on their empowerment to reduce help as soon as possible. As such, the funds were not enough to obtain certain stability or to cover all their basic needs (Weyland, 1999; Schild, 2013). In consequence, they left the already poor population in a more vulnerable situation.

The possibilities of starting a small business were also limited, as most of the national product was concentrated in the hands of a few private companies,

which controlled both the resources and the entrance to the market. At the same time, other sources of mobility were also restricted. The dictatorship had ended with free university education and had re-distributed schools to the responsibility of the local municipality. As a result, schools from poor neighbourhoods remained poor. There was also a boom of private and State sponsored education, broadening the gap between those who could and who could not afford them. Other opportunities for development were limited by the lack of neighbourhood infrastructure and the conservative economic policy implemented to reduce inflation, which allowed few 'unnecessary' expenses. Hence, the barrier to succeed for those already marginalised was almost impossible to surpass.

Therefore, Chileans were living the consequences of various economic crises that had, for some, completely transformed the life they had before the authoritarian regime. Their possibilities to improve that situation had also been reduced, as most of the paths to social mobility had been limited or privatised, left to the rules of a market that had already excluded them. Moreover, the capacity to overcome poverty and of social mobilization had been displaced to individuals themselves. It was their own responsibility to find a job, reduce their expending, limit the reliance on credit and provide the conditions to maintain their future. The result was a series of individuals sharing spaces and concerned about their own precarious situations. There was no common plan or a sense of connection that could mobilise them to collectively demand for a change. Thus, there were generalized anxieties regarding their access to basic services such as health and education, but also to the goods that could provide them with status and a place in society, which also promoted feelings of isolation and exclusion. This broadened the gap between wealthy and poor families. The city was also divided in richer and poorer sectors, making the differences more evident and the solution all the more unreachable. Especially, because the elements that could have improved their situation had been left tied up by the authoritarian enclaves. Under these circumstances, fear and anxiety could only grow.



#### d) Security

Given the context and concerns already evidenced, insecurity started to appear, in general to start with, and eventually specifically regarding crime. Initially, concerns about security were presented by the politicians in terms of the freedoms of democracy or about protecting citizen's rights, a discourse more in line with the Human Rights violations. For example, in the words of President Frei when talking to the nation: *'Our purpose should be that by the beginning of the next century, no Chilean lacks how to protect their rights'* (President Frei, 1998:6). Eventually security became more about private property, social status, and thus the right to be protected from crime, a goal more reachable under the circumstances:

*'The expansion of personal freedom must go hand in hand with greater security for the family and community. That is why we have transformed the fight against crime into a national priority and everyone's responsibility'* (President Lagos, 2001:4)

The Concertación governments then focused in fighting those feelings of insecurity and fear, and by the time Bachelet campaigned for presidency, which was the same year the juvenile justice reform was published, fear was on itself part of the government programme: *'Fear and insecurity do not belong to the Chile we are building'* (Bachelet, 2005:64).

In consequence, something needed to be done to placate the population. In this context, the reform of the justice system came as both the diversion and the solution. It implied clarifying the new rules of the game, as different Presidents of the Concertación put it:

*'This crisis reaffirms the relevant regulating role of the State, which must possess the tools and authority needed to establish clear norms and to make sure these are thoroughly respected'* (President Frei, 1999:5-6)

*'This implies also the capacity of a country that can, through clear rules, fix and stabilise; provide security'* (President Lagos, 2003:7-8).

The discursive concepts of fear and insecurity could be directly addressed in a crime control and justice rhetoric. Moreover, they could be re-framed in terms of daily activities, focusing citizens over the present instead of about the uncertain future. This of course left outside of the discussion all those elements in which both the government and the opposition could make no promises. A new up-to-date justice system could grant at least a base level of protection over some areas, especially regarding events such as a terrorist attack, violence, protests, the loss of hard-earned capital through mugging and robbery and so on. It was an official statement of the State regarding its concern over citizens' rights, and a clear line of behaviours that were prohibited in this new order; clarifying what to expect from fellow citizens at the same time. As such, it united the government and the opposition. None of them could deal with the other concerns citizens had. The Concertación needed to make a new agreement with the population about what the Chilean society could look like; the opposition could reaffirm a certain notion of control. A new social pact of behaviour could legitimise the new order and with that, gain at least the initial trust to start addressing some of the other pending issues.

This is not an unexpected development, as the effects of modernity and nations in crisis that generate anxiety in the population have been explained before (see for example: Pearson, 1983; Garland, 1985; Garland, 2001; Muncie and Hughes, 2002). In a society where public demonstrations had been prohibited for so long, rights to complain had been reduced and there were few mechanisms to overcome poverty and marginalization, it is not surprising the way out was the behaviour of those who were even powerless. Especially when those in the top of the hierarchy seemed to be untouchable. Young people and their behaviour seem to act as a scapegoat for the need of control that cannot be satisfied regarding people's future. Especially in capitalist societies that have a strong focus on private power and individual responsibility. At the same time, with all other sources of stress, tolerance to disruptive behaviours is reduced, as one interviewee stated: '*Childhood*

*issues require like, not a revolution, but political willingness, political agreements, citizens' agreements, and Chile is not very tolerant' (E., 2017).*

As mentioned at the beginning of this section, strategies that offered certain level of security in the anxiogenic modern Chile had great success, and the government needed to offer some sense of security to obtain and maintain citizens' support. In consequence, demands for greater control over juveniles started to take shape. As one interviewee highlighted: *'The issue became much more complex with adolescents because the idea of control came to be installed'* (Q., 2017). The highly uncertain landscape of 1990s' Chile demanded for some level of control, of protection, and as it seemed to have happened in England also in the past (see for example Pearson, 1983), the attention was displaced and refocused from all the sources of social insecurity to the insecurity of crime, particularly the one perpetrated by young people. Therefore, the attention started to be shifted from concerns about poverty, inequality and the uncertain future towards the more concrete behaviour of offenders in general and young people in trouble in particular.

## **II- Legitimation of the new socio-political order**

Before the dictatorship, Chileans used to be proud of their strong democratic tradition (Chaparro and Cumplido, 1982; Wesson, 1982; Constable and Valenzuela, 1993; Oppenheim, 1993; Rettig Report, 1993; Huneeus, 2000, Vanden and Prevost, 2002; Lawson, 2005). However, between the political conflict right before and in the 17 years of authoritarianism, this disappeared. State institutions had failed Chileans in one moment of time or another, depending on their personal affiliations, from the time of Allende onwards. Politicians and order institutions had turned their backs at them or left the nation to uncertain and even unwanted hands.

Moreover, key to the Concertación route to the Presidential seat was the discursive focus on Human Rights. However, the actions taken to address this debt left everyone dissatisfied. The Armed Forces kept denying what had happened, not providing any answers to the families; the opposition kept highlighting the actions of the military and General Pinochet, unwilling to make the Constitutional reforms needed to address some of these issues. The government itself wanted to leave a discussion they could not solve without conflict behind. Therefore, the Human Rights were just a rhetorical route towards legitimation, and one that ran out quickly due to the lack of progress.

At the same time, the opposition had been granted with the acceptance of the authoritarian enclaves and the continuation of many of their key figures in influential positions. Likewise, the authoritarian institutions had been validated by their continuation in democratic times. Chile had to wait until 2005 to see the first meaningful reform to the 1980s' Constitution. Furthermore, the cases of corruption that took place in the 1990s brought rejection and hopelessness towards political participation, distancing citizens from it while the elite remained.

Therefore, there were few elements Chile could claim made it a democratic country. It was basically reduced to popular election for most, albeit not all political positions (appointed Senators for example). This point was also made by President Frei in the mid-1990s:

*'The country lives the contradiction of an environment of democratic normalcy while experimenting, at the same time, the obstruction that comes from institutions with authoritarian origins, which do not have roots in our republican tradition'* (President Frei, 1995:33).

This led to a new interaction between the political elites, but also in terms of the interaction with citizens. The oppression of the past was out of the question, the victims of Human Rights violations and more neutral citizens preferred a rule not based on repression, where personal freedoms for all, and not just for a few, were granted. Accordingly, a new political culture

needed to be developed. There was a space to redefine democracy, to shape how politics worked in modern democratic Chile, and to transform national institutions into the new logics. This could bring stability to the country but also earn the authorities the support of citizens.

The present section intends to address the strategies to legitimate democracy over the 1990s and early 2000s and the strong impact of this process in the need to reform justice institutions. I will start by analysing what the new elites understood by democracy in terms of the institutional changes they needed to make, especially regarding crime control agencies. This will be followed by the new values of the Chilean society and how they also influenced this need to transform institutions such as the Justice Systems. In a later section I will refer to how concerns about crime reached the political sphere. Finally, I will cover how this all helped to legitimate the continuation of the political elite.

### 1. The institutionalization of democratic principles

Given the past events, the uncertain future and the political landscape already described, there was a crisis of trust in the country, as expressed by Concertación Presidents:

*'Chile needs to make a great effort to regain trust, trust that has been damaged. Trust in public institutions, trust in the world of companies and businesses, trust in the world of Work Unions and workers, trust of Chileans amongst themselves'* (President Lagos, 2003:10)

Citizens did not feel confidence in democracy, the government, or in key institutions that support and sustain the political order, such as justice. Following from that, state institutions needed to be legitimated in the eyes of the population. The present subsection will refer to some of the basic elements identified by the Concertación and the opposition to sustain a democratic order. These involve trust in the institutions, to grant the rule of

law and, of course, to protect and reinforce Human Rights. The purpose is to evidence how reforming the justice institutions (both the adult and youth systems) evolved to a need, but also became a strategy to address a series of issues regarding the basic characteristics democratic institutions should have.

*a) To build trust: Towards non-oppressive State control agencies*

After the participation of the Police and the Armed Forces in the violence of the regime, many avoided them, as interviewee explained: *'the police tortures, the police abuses'* (H., 2017). Therefore, actions were needed in order to change the image of State control agencies to regain citizens' trust. The government strategies included, for example, positively recognising the role of these institutions:

*'I value the progress made by our Armed Forces, their patriotic disposition and professionalism, hierarchy and discipline. We aspire to their full inclusion into the democratic system in conditions of absolute normalcy; in the best tradition of the Republic'* (President Frei, 1998:20)

They also made direct reforms in Carabineros<sup>7</sup>, both with the purpose to adapt them to modern times and to reconnect them with the community, as the words of Bachelet during her candidacy for president demonstrate:

*'We want the police to be in the streets and not in the police station. We aspire Carabineros to become part of the community again, of the neighbourhood life; and that they are recognised and respected by the neighbours'* (Bachelet, 2005:66)

Nevertheless, the mistrust in the justice system and crime control institutions remained. It was not only because they had been openly coercive institutions, allies of the authoritarian state, but also because they did not represent the new democratic citizenship, if they ever did in the past. They kept the old characteristics, such as the lack of transparency or no right to

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<sup>7</sup> The national armed police

defence. Therefore, there was a questioning of the capacity of the justice system to actually bring justice to people, instead of the historical impunity. This, in turn, had consequences for how effective justice institutions could be, point made by President Frei in his 1998 annual speech: *'We know how dangerous this can be. When the people do not have trust in justice, the law is worthless'* (1998:5).

This concern was also expressed by Lavín, the presidential candidate of the UDI [Democratic Independent Union, the authoritarian right-wing and opposition of the Concertación], in his government plan in 1999:

*'The problems of justice translate, first, in a sense, and then in an attitude against the system. An attitude that prefers the solutions driven by their own hands before turning to the system; because they do not see the real utility of doing so'* (Lavín, 1999:30)

This was particularly relevant as trust was needed to have citizens support, their participation, to implement new measures and even to make institutions work properly. At the same time, the discussion needed to be brought to the present time, displacing the discourse from the past failures. A reform of the justice system answered to those needs. New institutions and procedure, despite not necessarily having immediate trust, could at least avoid the deep-seated rejection the old crime control agencies had. They also implied a new set of rules with the promise of greater control over the actors of the system. The old penal procedure left the judge in charge of investigation and sentencing, giving them massive discretion powers with very little control, while the future of young people in need of protection or in trouble were decided solely by the judge of minors. Now, they could all be replaced by prosecutors and defendants and new guidance limiting the abusive actions of other crime control agencies, for example the period of time the police could detain someone before informing the Guarantee Judge.

Likewise, political discourses took the issue of trust and reframed it in terms of a basic need for the new system -the future- to work; in Lagos' words: *'It is proven that when the people trust in their police, and the police trust in the*

*people, offenders leave*' (President Lagos, 2001:4). This asked citizens to make a leap of faith, not over a broken past, but over the hope of the future, resource that had been used before in the plebiscite to win with the 'no'. Thus, allocating this responsibility in all citizens, involving them in a process that had always been distant, secretive, and imposed through repression.

It is not odd then, that the reform had the support of both the government and the opposition. Those who had supported authoritarianism in the past valued the Armed Forces and the police. They wanted those institutions restored to their former glory. Moreover, to change their image was not only up to their personal conviction, but it was also good for their future connections with said institutions. A reform also reinforced order, but in a context that had the support of citizens, which could make it more effective and legitimate.

*b) To implement the rule of law and democratic principles*

Directly linked to the previous issue of trust, came the need to adapt the old authoritarian principles to others more associated to democratic values. For example, through the reinforcement of the separation of the Judiciary with the Executive and the Legislative, which strengthened the notion of the Justice System as neutral instead of politicised. Notion that had been put into question by the attitude of passive support to the authoritarian regime showed by the judiciary (Hilbink, 2007). Transparency was another key aspect, as Bachelet highlighted in her government programme regarding the reform of the Penal Procedure of the country that took place in the early 2000s: *'The Penal Procedure reform has been a big step towards transparency and speed of penal procedures'* (Bachelet, 2005:81).

Accordingly, due process had to be granted, as one interviewee commented: *'In the decade of the 1990s, after the dictatorship, it was a time of winds in favour of greater Human Rights protection, including the rules of due process, the right to defence. They influenced a lot in protecting, or promoting, a change in the Procedure System, and to go from an inquisitive to an adversarial system'* (J., 2017).



Therefore, a complete renewal could state the institutional commitment to democracy and its basic principles, understood as an '*impartial and efficient justice system*' (President Frei, 1999:28), '*without discrimination*' (Lagos, 1999:23), a '*transparent, responsible, participative, and with a sense of authority*' (Lagos, 1999:24) State administration. As Bachelet highlighted in her government programme: '*The Penal Procedure Reform strengthened the rule of law and provided the fundamentals of justice*' (Bachelet, 2005:64). Moreover, it allowed the redefinition of the key concepts driving the Chilean democracy, such as '*responsibility by the people*' (President Frei, 1998:18), or '*to guarantee equal opportunities*' and '*equal treatment to all people*' (Lagos, 1999:24).

To frame the discussion in these terms was especially important as the Constitution and the electoral system left by the authoritarian regime could not be easily changed, being a permanent obstacle for democratic legitimacy. According to Gómez (2016), what Chile did then was to choose the reform of the justice system as the strategy. It was the solution, as it strengthened and institutionalised the rule of law again. Some interviewees also referred to this, though through a different understanding. For example, O. (2017) associated the need to address these pendant issues through the legal system because '*We were coming out from the dictatorship, all this generation [...] we were formed in a strong social authoritarianism. Issues were solved in the penal realm*'. While C. (2017) associated it to a cultural Latin American tradition instead: '*It was in a sense a very political movement at the end, and I believe it was mistaken; in the sense you were promoting something which is very Latin-American, which is that changing the laws you could change the situation of the people; and it doesn't work like that*'. All these ways of understanding the need to adapt national institutions to the new order, though, imply the tendency or preference to reform the justice system to deal with a series of social and political issues that could be considered beyond its scope in other contexts or under other circumstances.

c) *To protect Human Rights*

The respect for Human Rights was the key element to differentiate between the democratic project and the actions of the authoritarian regime. In the previous chapter I mentioned the two commissions created to clarify the Human Rights violations (Rettig and Valech Commissions). They had granted the recognition of the stories of many victims as well as economic aid. Nevertheless, both documents faced a lot of negative comments from the opposition and the Armed Forces. Moreover, as they did not refer to the identities of the perpetrators, as Borzutsky (2017) stated: there was '*some truth but no justice*' (p. 90).

This lack of concrete results regarding the national validation of the experiences of the victims only increased the social division on the issue, and instead of becoming an element of union and validation of democracy, it impacted on citizens' trust towards the Concertación government (Borzutsky, 2017). At the same time, there were no meaningful actions or measures against the judiciary for their failure to protect Human Rights, nor for their subsequent failure to prosecute them and bring justice in the early democratic years.

Therefore, in order to sustain the Concertación discourse around Human Rights and democracy, given they could not or would not address more directly the issues of the past, they needed to make sure to protect them for the future. The Concertación needed to answer somehow to the demands for more justice of the population, and to give strength to their own interests of expanding democracy, as recognised by President Frei in the annual speech of his last year in the role: '*Nowadays, the leaders of Concertación have in their hands a great responsibility: To give an answer to the great majority of Chileans who want more democracy, more freedom and more justice*' (President Frei, 1999:66).

In consequence a reform of the justice institutions could provide the government with the opportunity to make a statement of Human Rights protection and democracy, while the Human Rights debt and the

authoritarian institutions remained. For example, as this statement of President Frei illustrates:

*'I have the certainty that with this programme of reforms the democratic system will gain legitimacy, the Chilean State will protect better the daily respect of Human Rights and our legal institutions will provide security, protection and justice as expected by citizens'* (1995: 13)

Another example can be found in Lagos' government programme, as part of his strategy to gain electoral support:

*'We commit to keep driving laws and ratifying international agreements that allow to strengthen Human Rights. We will continue with the Penal Procedure reform'* (Lagos, 1999:25)

The role of the reform of justice institutions to validate democratic concerns regarding citizens' rights can also be evidenced in the legislative discussion of the reform of the juvenile justice system, being presented as a symbol to evidence the commitment of the authorities to rights' protections, point directly made by Deputy Uriarte: *'The sign that must be given to society, is that in all areas [the authorities] will always defend the rights of the people, and respect the action of the judges'* (2004:264).

Moreover, in 1990 Chile ratified the UN Convention on the Rights of the Child [UNCRC]. The document provided the Concertación with another source to validate their democratic government. What is more, the UNCRC brought an unprecedented focus on children's rights. However, it is clear this document does not have one single possible application, and that following its recommendations can lead to a huge variety of juvenile justice systems and childhood policies, as visible in all the countries that have ratified the document and the different institutions they have built.

As expected, in Chile the understanding of the UN Convention and of children's rights was shaped by the local values and culture, which were strongly influenced by authoritarianism and neoliberalism. Moreover, market principles and the notion of a reduced State had permeated all institutions

and policies in the country, thus limiting the possibilities to implement the UN Convention recommendations nationwide. Therefore, it is worth trying to understand the influence of this international agreement, if any, in practical terms

i. The appearance and impact of the UNCRC

In a conservative society, like the Chilean one, children and the family are amongst the central elements to be protected. This is visible, for example, in the comments of Deputy Ibáñez in the legislative debate of the Adolescents' Penal Responsibility Act [LRPA]: *'I find it key to reinforce everything related to family [...] we are reaping the frivolous way in which we have treated the family in Chile; the thoughtlessness and underrating of marriage and the family as the path for human perfection'* (2004:256).

This new focus on children's rights brought to general attention how the Tutelary System contradicted the international guidelines. This is a point made by most interviewees who highlighted how *'There wasn't a formal recognition of the notion of rights in these individuals'* (B., 2017), or how *'they don't have right to a lawyer when they commit a crime, they can be imprisoned for years'* (P., 2017).

Initially, it was the concern of just a few experts, but eventually it expanded to the political realm as well, as Deputy Bustos evidenced:

*'The current minors' legislation contradicts, in many different ways, the constitutional regulation and the principles of the Convention on the Rights of the Child [...] it has resulted in a punitive tutelary system which doesn't submit to the constitutional controls and permanently violates the rights it ensures [...] procedures without trial, the application of measures without the involvement of lawyers, imprisonment measures that violate the legality principle'* (2004:233).

In consequence, most interviewees identify the UN Convention as the trigger of the discussion towards a new juvenile justice system, categorizing it as a *'breaking point'* (N., 2017). Moreover, the influence of the UNCRC increased

as there was a notion of international pressure or the international image of Chile being at stake for not fulfilling its requirements. For example, in the words of Deputy Burgos:

*'This structural reform is based in that the current legislation of minors, in not few areas, is in contradiction with the dispositions of the political constitution and the International Convention on the Rights of the Child; and in some cases, it violates directly those norms; which locates us -as Deputy Riveros will mention-, in a very complex situation in terms of international law' (2004:250)*

The pressure strengthened by the presence of reports of the UN Committee making specific comments on the matter. As one interviewee put it: *'The committee on the rights of the child kept pressuring. They kept saying, Mr. State you are owing in terms of your international commitments, there's no clear distinction between kids, adolescents and adults' (H., 2017).*

This pressure was also visible in the actions of UNICEF to promote juvenile justice reforms, not only in Chile but in all Latin America. For example, they generated guidelines and united experts of many countries of the region to reform the old Tutelary Systems into Juvenile Justice institutions according to international standards (A., 2017; L., 2017; I., 2017; F., 2017). In the words of one interviewee: *'It was a time in which Latin America in general promoted a lot the issue of legal reform as the radical change in the situation of children, I mean, a time of great influence of the Convention on the Rights of the Child' (C., 2017).*

Moreover, the postulates of international guidelines regarding the treatment of youth offending also received extra attention given other institutional changes taking place in the country. For example, regarding due process and the need to leave behind the secrecy of the old criminal system, guaranteeing the rights of all the participants in the process. Nevertheless, these changes in the national culture and order also influenced how the UNCRC was incorporated to national rule, and how it shaped its influence, to be analysed in the following subsection.

- ii. Neoliberalism and authoritarianism shaping the understanding of children's rights

The UNCRC brought a new understanding of young people to the country. Mainly, as '*subjects of rights instead of objects of others' rights*' (Deputy Bustos, 2004:233). Before that, as shown in chapter one, young people used to be considered objects of the State. However, through the neoliberal lens, and under the remarked focus on individual responsibility, the notion of rights came to be equalled with responsibilities. For example, in the words of Deputy Bustos in the legislative debate: '*The law project under discussion, precisely, establishes young people are subjects of rights. They are people and thus they also have responsibilities according to their development and needs*' (2004:280). Discursively they became inseparable. For some, they were the same. For others it was impossible to have one without the other ('*Today, we make them not only subjects of rights, but also of duties*' (Deputy Soto, 2004:262).

The Convention also presented juveniles as developing beings. However, given the past notion of them as unable children or full adults they were permanently compared to the adult population instead of being understood as a group with its own characteristics. For example, even when they were identified as presenting more opportunities for rehabilitation and offending prevention, it was in relation to adults' behaviour, as the words of Senator Espina illustrate: '*Practically all adolescents are susceptible to be rehabilitated; instead, it is almost impossible to do it with a professional adult offender*' (2004:498). In consequence, they were identified as the right moment to stop and prevent future crime before they '*destroy their lives*' (Deputy Monckeberg, 2004:268).

At the same time, the UNCRC involved a series of suggestions of how the State could guarantee children's rights. However, Chilean neoliberalism would never allow such welfare display. Thus, national political economy also set the conditions for the implementation of the international agreement. For children to receive support from the State, they had to become participative

or prospects of participative members of society, that is, active involvement in the market. Therefore, to grant them State aids they came in exchange of responsibilities. It was only through that lens that it made sense they required procedural guarantees when facing a justice system that was, under the tutelary approach, for their own protection.

Thus, young people had gained a voice that was not allowed in the existing justice institutions. In consequence, a reform was needed, one that granted this recognition of them as almost adults though not yet. As Muncie and Hughes (2002) highlighted, juveniles tend to be defined by what they lack. Situation expressed in the demands for a specialised juvenile justice, which can be summarised in the words of Deputy Saa: *'A special kind of justice because the characteristics of adults are not consolidated yet'* (2004:358). By the end of the legislative discussion, this notion of adultized young people is more evident, as it was less tempered by children's rights discourses. The result was the dismissal of most of the UNCRC suggestions on the matter, while in practice the 'adult system's' dispositions predominated. The process was summarised by one interviewee: *'The project goes deforming and it distances more and more from the standards of the Convention on the Rights of the Child and it gets closer and closer to, let's say, an adult penal law, harsh, where specialization goes losing place and logics of an adult penal law start to directly rule'* (H., 2017).

This way of understanding young people and the suggestions of the UNCRC led to a very interesting way of fulfilling the agreement. Instead of developing a childhood policy, which was hinted a few times in the Congress discussion (for example: *'The needed adaptation we have to make, as a State, of our current regulation of childhood'* (Minister of Justice Bates, 2004:239)), the solution was to reduce everything to the justice system. By doing this, the Chilean State saved resources from the creation of more institutions and a network of services. So, for example, if a child needed drug treatment, it could be provided through the justice system, or, if they could not comply to the education system, they could receive training in a controlled environment



according to the needs of the labour market. The expectations over the new juvenile justice system are visible in the words of Deputy Guzmán:

*'It is logical to lower the age of penal responsibility to 14 years of age, as long as the legislation points to the social reinsertion of these children and adolescents. That is why we need programmes of education, training, and to battle drugs and alcohol addictions'* (2005:1035)

At the same time, the new juvenile justice institutions could provide the bureaucratic barrier to select what citizens needed what kinds of aids and who could be left out from State support. If they needed protection because their rights had been violated there was the Family Court. All other children who were out of justice institutions could be considered to 'cope', and it could be assumed their rights were being guaranteed in the essentials, the details could be fixed through, for example, meals in schools.

Some members of the parliament and participants in this research criticised the reduction of a childhood policy to a juvenile justice system. They summarised the situation as '*indifference*' (H., 2017), '*neglect*' (O., 2017) and '*lack of interest*' (P., 2017; M., 2017). However, at the end what predominated was the detachment of real and deep socio-political concerns over children's rights, which is visible in the critique presented by the 2015 report of the Committee on the Rights of the Child regarding Chile. In consequence, these were understood only as a series of norms, instead of a new way of community interaction. There was a prioritization of a penal approach, as the words of the Surrogate Minister of Justice Arellano evidence: '*It is much better to invest public policy money in adolescents' penal responsibility than in any other mechanism to fight crime*' (2005:1041), instead of a national programme that involved the resolution of their basic needs from varied state actors (as the Ministry of Health or Education), or a national entity of protection. In the words of one interviewee: '*The Convention becomes very strong, but it stays focused on the legal aspects only*' (Q., 2017). Children's rights had been reduced and the UNCRC recommendations, as Muncie and Hughes (2002) commented before



although in a different context, were given only secondary consideration. It makes sense then to conclude that the UNCRC was not really the starting point for a juvenile justice reform, but the need to legitimize the new political order was what drove politicians to use it as a rhetorical tool for national and international support. This need was strengthened by the pressure of a regional movement that could impact on Chile's international image and interaction with neighbour countries. This is not to deny that the UNCRC had a role in the reform process, but it was more of a base for the experts, while politicians treated it as only discourse.

Therefore, the reform of the justice system can be understood as the symbol to define and represent the Chilean democracy, where old discourses about justice, protection, security and rights could be re-presented in new ways; as one interviewee stated: '*Soledad Alvear*<sup>8</sup> [...] *realises the Penal Procedure reform can be the transformation seal they required in terms of justice*' (M., 2017). To erase the old justice system and create a completely new procedure and institutions granted the government and the opposition the opportunity to move from issues none of them wanted to discuss to a new battlefield. One that represented them both, because it was about rights and control. At the same time, it provided the chance to institutionalise democracy, taking its driving principles to become the values of new, modern institutions. Likewise, it allowed to expand notions of rights to other fields, offering a way to deal with the situation of children and young people, all while avoiding falling into measures that distanced from the neoliberal logic of a reduced State that had the support of all the political elite, being then another element to promote consensus.

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<sup>8</sup> Minister of Justice in the government of President Frei (1994-1999)

## 2. The new social values of the Chilean society

The changes experienced by the Chilean society brought a series of new values and principles. There was a new focus on private property, protected by the 1980's Constitution; but also issues like modernity, efficiency, efficacy and individual responsibility were now key in ways they had not been before the 1970s. The authoritarian regime had led the Chilean society to prioritize those values, and the Concertación had embraced and decided to build over them. In consequence, for the government and the opposition to gain greater legitimacy in their quest towards stable power, they needed to represent, respect and reinforce what had become part of the national culture. The purpose of this subsection is to analyse the role played by these values into the development of a need to reform the old Tutelary System for a new Law of Adolescents' Penal Responsibility [LRPA].

### *a) Individual responsibility*

The replacement of the feeling of community to individual responsibility was not only in terms of social mobility and wealth, but it extended to all realms. There was a marked reinforcement on embracing the democratic order, abandoning all notions of the paternalism from the past. Point highlighted in different occasions by Concertación presidents. The new social discourse can be summarised by the words of President Frei in his national speech in 1998: *'If we failed yesterday, it was for each one's responsibility. If we progress today, the merit also belongs to each one of us [...] the future keeps the promise of our own responsibilities'* (p. 34).

Following this trend and as Muncie (2012) evidenced in a different context, individuals and communities also received the responsibility of crime prevention and stoppage. Quite in line with what Garland (1996) described as a 'responsibilisation strategy'. This new notion is visible, for example, in President Lagos speeches right before the LRPA went to Parliamentary discussion: *'Neighbours will have funding for their projects to recover public spaces and to create surveillance committees, but they must commit to reject*

*disorder and impunity in their neighbourhoods'* (President Lagos, 2000:15). This, of course, becomes another source of anxiety to the ones previously described.

Moreover, as Garland (1985) expressed, under a free market society, offending and poverty became individual choice. Juveniles, who used to be perceived as unable and thus a State responsibility under the Tutelary System, also became responsible for their actions. Suddenly they were accountable for their offending or disruptive acts. As Deputy Saa stated, there was a change in the ways young people were understood by society: *'We are completely changing the traditional way to see these children; we are making them responsible of their behaviours'* (2004:359). Under this perspective, the Tutelary System failed, as the Minister of Justice of the time, pointed out: *'The tutelary legislation [...] highly faulty, lacking all concept of making the other responsible'* (Ministry of Justice Bates, 2004:239). The result was the radical clash between the justice system that dealt with young people from a protection ethos and one of the core principles of modern neoliberal democratic Chile.

#### *b) Efficiency and efficacy*

Individual responsibility was not the only value that had taken predominance over both State administration and the expectations of the general population. Efficiency and efficacy were also new basic principles strengthened by the 'consumer' – 'service provider' relationship established by the authoritarian right-wing Majors in the early 1990s (Álvarez, 2014).

Following the 'apolitical' discourse of the military government, the authoritarian right-wing promoted less ideologized politics (at least in rhetorical terms) and turned the attention towards what politicians did. A good example of this are Mayors' elections, starting with Joaquín Lavín, member of the Democratic Independent Union [Unión Demócrata independiente, UDI] who became known after his performance as Mayor of Las Condes, one of the richest municipalities in Chile. Silva (2001) and Álvarez (2014) described how he privileged a discourse of efficiency, which was based on residents of

the Municipality being understood as clients paying through their taxes for a service that should then guarantee answers to their demands. Lavín presented himself as apolitical and uninterested in political debate. He, like the Chicago Boys of the early 1970s, was also an economist who later studied in the University of Chicago and worked closely with the authorities of the dictatorship, such as Jaime Guzmán. He privileged a technocratic neoliberalist approach, favouring managerial administration, and just as the Concertación, he promoted a style based on consensus, avoiding confrontations (Silva, 2001). This made Lavín a successful candidate, who competed with a very small margin for the presidential elections of 1999. He continues as an active politician to this day, having served as Minister and Mayor in other periods as well.

In consequence, performance to these expectations could either bring political support or be penalized in the next elections. Therefore, State institutions had to adapt to these core values. They needed to change to satisfy the 'customers' each moment more aware of their new 'rights' and the possibility to voice and act on their discontent.

One of the institutions that failed to guarantee efficiency and efficacy on its performance was the Tutelary System, as the words of Lavín in his government programme in 1999 illustrate: *'Chile needs a change! It needs fast and efficient justice which works for all. We need to perfect the system, to modernise it, to increase its coverage to reach all'* (1999:30). Lavín's words reverberated strongly, because the Tutelary System had other failures. For example, according to the Ministry of Justice Bates over the legislative discussion of the Adolescents' Penal Responsibility Act [LRPA], it was *'inefficient to reach the prevention and punishment goals required'* (2004:241). Accordingly, citizens were unsatisfied. And as one interviewee commented: *'In Chile there was this need to guarantee efficacy and efficiency'* (N., 2017). Therefore, something needed to be done to adapt youth control to the new expectations.

c) *Becoming 'productive citizens'*

Under these socio-political conditions, there was also a strong focus on promoting these values and principles to the new generations. To transform all citizens into productive and active participants in the economic system was associated to guarantee its perpetuation. Opinion visible in the words of Deputy Ibáñez in the legislative discussion of the LRPA: *'These young people are in conditions of being rehabilitated; the country needs that they are, so they can fully integrate in the honest and productive activities of society'* (2004:255).

However, if family education was not transforming young people into committed workers who could adapt and accept the cheap labour, low protection and high credit to guarantee the expected self-regulation of the market, how could they become the citizens the neoliberal society needed? Education, perhaps, could seem to be the proper field for this training. However, as previously discussed, the authoritarian regime had conducted dramatic education reforms which left too much freedom to private actors and institutions. The hands of the State were thus limited. Crime control and punishment, which are symbols of authority and sovereignty (Muncie, 2012), were the only fields where the government still had the upper hand, and in fact it was expected of them to do something.

Hence, the juvenile justice system could become the institution that was needed to deal with all the other issues that could not be easily addressed by any other State or private body, as Deputy Luksic commented in the LRPA debates: *'We must assume the responsibility of their formation and rehabilitation'* (2004:257). It could 'educate' to the new social rules all those who had already deviated, while at the same time control and limit their disruption. This goes in line with what Donzelot (1979) mentions about formal means to transmit guidelines about social behaviour, one of the foundations of the tutelary logic already present in the country. Given this was part of the cultural understanding of juveniles, it was easier to believe the institution needed a reform instead of all the principles behind it. Moreover, this allowed

to keep dealing with sovereign issues by maintaining a sense of authority and formation over citizens in general and the new generations in particular.

#### d) *Security*

Given the anxiogenic context of the 1990s and 2000s security had become a social right to protection, as President Frei proclaimed in his second year of governance: *'We conceive security as a collective and solidary right'* (1995:27).

As Wacquant (1999) commented, the influence of the neoliberal Washington consensus shaped the penal realm as well, especially in Latin America. Therefore, a new juvenile justice could be the solution to a series of problems and needs that had arisen in the Chile of the 1990s. A new juvenile justice could make sure State institutions modernized and represented the social values the authoritarian regime had tried so hard to implement into the core of the Chilean culture. It could expand the legitimacy of the national political economy, and it could educate children to follow that lead regardless of what their parents, who had lived in a different society, could teach them. If they did not adapt to the new social rules, they could be sent to the juvenile justice system where they could be transformed into *'citizens of good'* (Deputy García, 2004:260) according to national individualistic expectations. All without investing too much on them or the social factors that explained their behaviour (also identified as a neoliberal consequence in Wacquant (1999)'s work).

Moreover, if the Concertacion wanted to keep their political position, they had to represent and protect the Chilean values in all realms where they had some influence, because this could constitute another source of connection with the population. As it has been previously stated, their influence over the institutions left by the previous order was constrained. But in the justice system they had greater freedom of action. Thus, the justice system could again become a symbol of change, representing modernity and the new government while diverting the attention from all those other institutions that kept working under the logics of the past.

### 3. Struggle for representation: the legitimization of the political elite

In the early 1990s, the Concertación had received over 50% of citizens' support; they also had international approval. At the same time, the right-wing was fragmenting, they had to reorganise, and had lost the officially predominant hand they had in making the decisions. Where in the past, no one could oppose them, now they had become the opposition. However, as already mentioned in chapter four, cases of corruption started to appear (Álvarez, 2014), and the Concertación started fragmenting, while the right-wing strengthened. For example, the Christian-Democrats separated from the coalition, while National Renovation and the UDI joined in their own Chile's Alliance at the end of the decade. Furthermore, they had the support of over 40% of the population, who had voted to continue under the rule of General Pinochet (Oppenheim, 1993). They had not been politically nor economically discredited, and the authoritarian enclaves granted them majority in the Senate and other political seats through the binomial electoral system (as explained in the previous chapter).

Therefore, even though the government kept gaining most electoral seats, did not have full support, nor fill this gap as time progressed. At the same time, the right-wing had the strength of faithful followers; many of whom had a strong investors' capacity. Following from that, they organised as an active opposition soon after their defeat in the 1988 referendum. They only needed the arguments to balance the scale towards their candidates instead of towards the Concertación, while avoiding sore topics that could be used with more strength against them later. This banned a series of issues, such as Human Rights, or the faulty functioning of the institutions they had left, and even corruption as the Armed Forces had been involved in more than one episode. Therefore, their main options were what they had been known and admired for in the past: the focus on economy through economic growth and employment; and citizens' control.

Economic growth granted them a permanent topic of debate. However, they could not extract as much from it as they perhaps wanted. The Concertación had embraced the neoliberal model, respected private actors, and even encouraged both national and international investment. The government's attitude might have been too economically conservative for some (Weyland, 1999), but poverty was decreasing, and for years Chile kept an outstanding growth of about 7.7 points in the GDP (Borzutsky, 2017). Moreover, the Concertación also presented the topic in their favour and as a critique towards the opposition, as the word of Bachelet in her government programme at the time of her candidacy for presidency illustrate:

*'The dictatorship, in its alliance with neoliberalism, dedicated great efforts to reduce the size of the State, disregarding its public role, disqualifying its workers. One of the key tasks the Concertación has taken responsibility for, with the rectification of the economic model, had been to reclaim the role of the State'* (Bachelet, 2005:76)

This left only their marked focus on control. According to one interviewee, there was then a transference from the internal enemy they had openly fought in the authoritarian regime, to the criminal: *'From 1990, when the dictatorship ends, a very concrete and peculiar phenomenon starts. Society translates the centre of their worry, imposed with a biological bias from the dictatorship as the internal enemy, the terrorist, to have another internal enemy all the time. That is the place now occupied by crime'* (R., 2017).

This transfer of the focus of control and the rise of security started with some events that arose national attention, which according to Tsukame (2016), made the right-wing feel insecure as they had not felt since the times of Allende. In 1991, the actions of some extremist groups ended in the murder of Jaime Guzmán and the kidnapping of the son of Agustín Edwards, the owner of 'El Mercurio', the newspaper supporting the authoritarian regime. The events were labelled as terrorism and opened the topic of security to be politically used by the right-wing all through the decade (López, 2000; Candina, 2005).



By 1992, Mr. Edwards had created Paz Ciudadana, a foundation dedicated to research and influence policies about justice, crime and security which purpose was described in the previous chapter and the extent of its influence will be shown in chapter six. By the 1993 Majors' elections, the right-wing put in the front of the discussion the need to control the crime threat and guarantee security in local policies. It started with Mayor Lavín implementing extra protection measures in Las Condes Municipality through subsidies for Municipal guards on the streets and rising fences (Álvarez, 2014). This was mostly possible because Las Condes was one of the richest Municipalities in the country, existing differences of access to these security measures according to the resources of the community and market-led interactions. Under any circumstance, crime allowed a short-term focus with more visible actions, such as a greater number of police officers in the streets.

Before these events, crime had not been the focus of the discussion, while security had been treated mostly in terms of National Security. Moreover, as it had been a topic discursively dominated by the authoritarian rhetoric, the conservative right-wing had already the tools to revive 'the need to control the threat' only now towards daily crime instead of Marxism. Furthermore, as this had never been part of the Concertación presentation card, more in line with Human Rights discourses, it provided a weakness of the government and a strength for the opposition, which could now direct the debate, setting the base for future political discussion.

Therefore, the first thing to keep in mind in the rise of crime, security and justice as new focus of national concern, is that these were not born from a demand of the general population. It was instead imposed by the political elite of the opposition, as one interviewee put it: '*The most conservative sector involved the UDI [the authoritarian right-wing], and they had patented security as a topic for political debate*' (A., 2017).

The strategy was highly successful, for example with Lavín almost defeating the third Concertación President Ricardo Lagos in the 1999 presidential elections. The UDI candidate strongly referenced crime and justice in his

government programme, highlighting the need to end with the '*party of the offenders*' and to '*send clear signals against crime*' (1999:4).

This strategy was also used in other political elections, in the Senate for example, as one of my interviewees highlighted: '*Espina had just been elected with first majority in the Senate using a very strong discourse around security. He had no incentive to stop that discourse*' (A., 2017).

To retaliate to Lavín's presidential campaign, Lagos made similar promises, in his own style, to address the issue of crime: '*The government of Ricardo Lagos will fully assume the legitimate distress of families regarding the size and seriousness of the crime phenomenon [...] The government of Ricardo Lagos will have among its priority tasks the protection of the security to live and the goods of people through the integral fight against crime*' (Lagos, 1999:19). Once he was elected, he focused the discussion around building more prisons and the promise of increased use of incarceration (Dammert and Díaz, 2006; Morales, 2012): '*When in this government we finish building those ten prisons, we will have built the equivalent to all Chile has built in terms of prison all over history*' (President Lagos, 2002:9-10) .

Once the Concertación joined the 'security approach', the result was an ever-escalating process where security, justice and crime became key elements in all public campaigns, regardless of the political position in the debate (Álvarez, 2014). This is not so visible in the first Concertación government, but it became clearer in the second one, with President Frei (1994-2000). He highlighted on more than one occasion how hard it had been to progress in the areas that had been controlled by the opposition in the past (health, education, the National Constitution). For example in his 1998 speech, after the Asian economic crisis had hit the country: '*If we have not been able to progress, it has been because sections of the opposition have been reluctant to change [...] If the opposition insist in closing the door, the country will know who are those who do not want to progress towards democratic consolidation*' (President Frei, 1998:31)

Therefore, the Concertación needed to develop further in an arena of competition imposed by the opposition. Thus, President Frei started to emphasize the need to protect citizens, and to fight against adult and youth crime (being the first one making this distinction) as well as drug abuse (De Ferrari, 2006): *'Crime, terrorism and drug trafficking are a threat for national coexistence that the government has fought; and will keep fighting with firmness, energy and responsibility'* (President Frei, 1995:27). It resulted in measures to strengthen the legal punishment towards certain actions, such as receiving stolen property with the law 19,413 in 1995, or rape under the law 19,617 in 1999; the strategic plan of Carabineros in 1995, a programme orientated to strengthen the police; a project to build more prisons in 1997, and in 1999 to incorporate the 'quadrant plan', which divided and organised the areas to be guarded by the police, so they could know the people living in the community. President Frei also suggested to ameliorate the penal system, modify the penal procedure and provide more resources and personnel to the armed police (Carabineros) and civil police (Policía de Investigaciones [PDI]) (López, 2000; Dammert and Lunecke, 2002; Candina, 2005; Morales, 2012). It was in Frei's government that the Penal Procedure reform came to be discussed and accepted. According to Duce (2004) and Morales (2012) it was widely supported. López (2000) added that this had to do with the similarity between the left and right-wing in measures to tackle crime.

By the fourth Concertación government, with President Bachelet (2006-2010), the issue had reached even farther, building more prisons and linking crime and security to other areas of public policy: *'We will actively work to protect citizens and attack the deep causes of violence and crime. Citizens' security is basic in the social protection system we are going to build'* (Bachelet, 2005:64).

To address crime control, justice and security were thus gaining strength since the return to democracy. It became key not only to gain supporters, but

also to attack the other candidates at all political levels, as one interviewee recalled: *'Every time we had elections, security was one of the first things everyone offered. They all critique who is governing for not doing anything, and they offer [to do something]'* (A., 2017). This can also be related to the fact that other reforms that could strengthen the power and legitimacy of the Concertación government were constrained by the socio-political structure left by the authoritarian regime. Thus, as Gómez (2016) stated in her research about the quality of the rule of law in Mexico and Chile, Chile went for a legal/judicial reform. The best way to strengthen the government was to change the justice laws.

### **III- International image**

Besides all the national and internal conflicts, the dictatorship led to negative perceptions of Chile abroad. The Human Rights violations and the harsh cut to democratic rule brought criticism and condemnation by the UN and many countries. Once the democratic rule was established, the political elite was adamant to gain international favour, as the words of Lavín in his 1999 candidacy highlighted: *'Chile wishes to be respected by the world'* (Lavín, 1999:34). Furthermore, national prestige was directly linked in their imaginary with global economic participation, and hence with success: *'The key is to understand that keeping positive international relations and be a respected country in the world is good for everyone. It allows us to access new opportunities and to improve our life quality'* (Lavín, 1999:35). Thus, a negative image was understood as a factor that could damage institutional and financial trust, limiting Chile's access to other markets.

The connection between the image of Chile, democracy, Human Rights and access to markets had some ground. The nationalization strategy of Allende and later actions of the authoritarian regime led to the rejection of international governments to support Chile and subsequently to investors and international businesses leaving as well as markets being blocked (Wesson,

1982; Rackynski, 2000). Consequently, the democratic context provided the opportunity to re-interact with these markets. In order to attract these markets and erase the negative past image, Chile had to present itself differently. As a result, the legitimacy of the new authorities depended not only on the institutionalization and protection of Human Rights, but also in being seen by the international community as doing so, as different Presidents of the Concertación recognised:

*'In the international sphere, in a context of economic globalization, Human Rights are our presentation card. A country that respects Human Rights has nothing to hide, and can relate with all men whatever their status, class or condition'* (President Frei, 1995:40).

*'Since we recovered our democracy in 1990, we Chileans started a successful process of international reintegration'* (Bachelet 2005:97)

Human Rights had become a discursive tool to improve the country's image and grant its legitimacy, reaching for the economic goals they intended and so badly desired. I claim the discourse was more a tool than real concerns over the matter because, as previously illustrated in the current and previous chapter, there were not many changes regarding the situation of people who had been victimised during the dictatorship. Neither public nation-wide condemnation for the actions of the Armed Forces, nor an official apology were provided (Hilbink, 2007; Borzutsky, 2017). However, there was a permanent emphasis in political speeches regarding the success in integration to international markets or generating trade agreements. For example: *'We are one of the most open economies in the world. That is why we are fully interested in free trade and the instruments that promote it in between nations'* (President Frei, 1998:20).

As it has been previously mentioned, the military government and the Concertación government saw their legitimacy and support as strongly depending on economic success. But a positive international image could offer more than that, for example in terms to validating how trustable they were, as the words of President Frei demonstrate: *'A sign of the trust in this*

*country is that last year we received international investment up to eight times more of what we had in 1990'* (President Frei, 1998: 24).

Or for example, to gain support of the population towards new strategies, policies, or the future of their government, as President Lagos hinted: *'The prestige Chile has earned in the world makes it mandatory to take responsibility'* (President Lagos, 2003:5).

This gave power to international monetary institutions to put some conditions and make suggestions. Chile, not wanting to jeopardize a positive interaction would make at least a visible effort to implement them, as President Frei put it: *'This [international trust and investment] is our most precious capital and we are not going to risk it under any circumstance'* (1998:24).

In this context, there was direct pressure from institutions like the Inter-American Bank, for Chile to reform the old Justice System to a more modern one, adapted to the characteristics of international models and with a strong focus on due process. This was clarified by some interviewees, who attributed a key role to these institutions in the beginning of the discussion of a new Criminal Justice:

*'At the end it was because the Inter-American bank, specially the IBD [...], The UNDP and the Ford Foundation, they wanted to generate a rights' space. But there were other interests as well [...] they needed to have security to invest, to generate secure spaces'* (N., 2017).

This can be associated to what Lavín said in his government programme when running for president in 1999: *'Legal security is a basic condition for national economic development'* (1999:31). The notion of a more effective justice system could decrease the risks of investing and sending people from other countries to Chile, as certain levels of security and trust in their institutions could be granted. A reform of that magnitude could show political agreement, stability and a willingness towards the goal of both protecting the rights of goods' owners, but also of goods' providers. It was a good strategy, and again, it evidenced the UNCRC was not the real starting point of

concerns over the failure of the previous juvenile justice system and the need of a new one, even if it was a strong part of the rhetoric.

Following from this, to reform the justice institutions provided two key elements in terms of Chile's international image. It could make the country look more adapted to modern times, it could transform Chile in a globalized country, following standardized international rules and guidelines, with solid open institutions. At the same time, it could satisfy the international critiques regarding the need to protect Human Rights. To change from the old inquisitive to an adversarial justice system implied granting a due process, and with that the notion of respect for the rights of the accused and the transparency of procedures. In consequence, a reform of the justice institutions could give a 'safe' image to the country. Even though the government and the opposition did not necessarily want to take democracy in the same direction or understood it in the same way, they needed to build the reputation of Chile as a trustworthy and safe democratic country, the justice system being a tool for this.

#### **IV- Growing concerns about crime control and justice**

Generalized concerns about security and crime started with the return to democracy, and led to a complete reform of the ethos, institutions and procedure of the justice system in what came to be known as: '*One of the deepest transformations of the Chilean State since its consolidation in mid-19th century*' (President Frei, 1999:28). How did it come to happen? How did the country reach the decision to completely transform the justice system, even though they built over what already existed in other areas? According to one interviewee, this can be explained as a natural process of the evolution of society once basic needs are covered: '*When Chile starts growing our per capita income increases. We start solving poverty issues, massive and systematic violations disappear; we have a democracy, and well, expectations and demands start changing*' (F., 2017). Therefore, this could



be associated to the amelioration of the economic situation progressively during the 1990s, where people were able to start worrying about other things, such as quality of life.

However, so far we have evidenced a series of social and political conflicts where to redirect national attention towards justice institutions and their reform was a suitable strategy. It could provide citizens with palliatives for their fears, give a second chance to the trust issues, legitimate the new government and the political elites. Nevertheless, artificially redirecting social anxieties towards crime may not have been so successful. The present section intends to evidence how the reform was also strongly influenced by elements directly associated to the offending and justice landscape. It was facilitated because all over the 1990s there were increased perceptions of high levels of crime. Moreover, in those years, there was a reform of the Penal Procedure of the country. This allowed to face many of the critiques against justice institutions and granted - at least the rhetorical representation, of - the new social and democratic values, proving to be a helpful measure. In turn, this arose strong criticism against the old juvenile justice, the Tutelary System. Leading to political action for its reform.

### 1. Perceived high levels of crime

Based on a series of studies, from the late 1980s, and at least until the early 2000s, there was a widespread notion that crime in general and youth offending in particular had increased in quantity and violence levels both dramatically and permanently (Cortés, 1991; Folch, 2002; Mettifogo and Sepúlveda, 2004; Dammert, 2005; Méndez and Barra, 2008; Morales, 2012). A think tank of the authoritarian right-wing -Freedom and Development [Libertad y Desarrollo]– claimed that between 1977 and 1996 robbery increased by 120% (López, 2000). According to Paz Ciudadana (2002) between 1990 and 2000 robbery increased in 39% and robbery with violence in more than 200%.



The general perception of increased crime was also well expanded and is repeatedly visible in politicians' public speeches and debates, for example in the words of Deputy Ibáñez: *'In the last years there has been a huge increase of youth offending. Young people have entered, quite early, into the world of crime'* (2004:255). Moreover, according to some interviewees: *'The issue of security between 1994 and 2005, or 2004, totally changed the temperature, it became one of the main demands of the population'* (F., 2017). The main expressions of the time related to the need of *'mano dura'* (iron fist) against delinquency; together with the notion of the juvenile justice as a *'revolving door'*, because juveniles were understood to enter the system just to be freed immediately and without a sentence (Tsukame, 2016).

However, there was little knowledge about both real public opinion and youth offending, to be addressed in greater detail the following chapter. Moreover, there was another group of researchers and authors that claimed that in fact crime was not in the rise. Some sources showed an unstable trend of ups and downs (López, 2000; Dammert and Lunecke, 2002; Candina, 2005). While, Candina (2005) highlighted that between 1991 and 1994, the period when public discourse against crime became stronger, the rates of robbery, the most common crime in the country, actually decreased. According to the author, what increased dramatically were the robbery reports, together with demands of greater control and security. Morales (2012) provides a good notion of how crime report changed over time, stating reports of property crime had been following a decreasing trend since 1985 to reach their lowest point in 1995. But, between 1973 and 2003 these reports tripled, increasing exponentially between 1998 and 2003.

Therefore, even though there is contradictory information regarding Chilean crime rates at the time, and that the most dramatic figures to evidence this problem came from conservative right-wing think tanks, the general notion, in the political realm at least, was that crime had increased and that the general population required a solution.

## 2. The reform of the Penal Procedure

The Chilean justice system was old and outdated; in the words of one interviewee: *'We were very behind because Chile faced together the delay of the dictatorship plus 20 or 25 years of previous delay. It was too much, like 40 years'* (M., 2017). There were also widespread beliefs of the justice system as ineffective, slow and too soft, encouraging impunity, bureaucracy and not improving security (López, 2000; Dammert, 2005; Candina, 2005). As one interviewee summarised: *'there's perception of insecurity and the system works like hell, you understand? I believe that's institutional weakness* (E., 2017)'; or how President Frei put it in a formal speech: *'The goal of the reform is to change, to modernize our penal procedure, which after almost a century without a single renovation had lost effectiveness'* (President Frei, 1998:6).

Therefore, they needed to be modernized. They needed to be adapted to the new times and priorities of the population and the government. The discussion started in relation to the Penal Procedure, that dealt with adult offenders and young people declared with discernment. As the words of President Frei evidence:

*'There is a wide consensus in political and social sectors. Nowadays, no one denies that the current penal procedure is an institution that does not goes in line with a modern and democratic State'* (President Frei, 1995:13)

In consequence, as stated in chapter one, the Penal Procedure reform discussions started. And it was a radical transformation of what it had been before, going from inquisitorial to adversarial, from secret to public, creating new institutions, guaranteeing accused rights and creating the figure of the Guarantee Judge to make sure they were respected. The new procedure and institutions started working in the year 2000 and it took until 2005 for it to be implemented all over the country.

Those changes made more evident the lack of rights guaranteed in the Tutelary System. Point directly made by one interviewee: *‘There was a broad agreement than the system of minors was clearly out of everything, I mean, it didn’t accomplish the due process standards, it wasn’t ensuring what the adult system ensured for adult people’* (L., 2017). Therefore, this opened the door for critiques about the differences between institutions and how the one dealing with juveniles had a more aggressive procedure and more punitive consequences.

The results were demands to guarantee at least certain basic procedural rights for juveniles, just as in the ‘adult system’, as Bachelet stated in her government plan when running for President in 2005: *‘The implementation of the Penal Procedure Reform had generated the need to broaden the structure and principles of the new system to the penal justice of young people’* (Bachelet, 2005:82).

The need of a new justice system became more evident in 2004 with the creation of the Family Court that took as its mission the protection of children and young people. Hence, the principles of the UNCRC were part of its core ethos. They dealt with all cases where there was suspicion any of the rights of a child were being violated. All decisions had to be made in consideration of the child’s best interests, again increasingly evidencing the failures of the Tutelary System, though by then the new Juvenile Justice was in the middle of its legislative debate

### 3. Notions of failure and critiques to the Tutelary System

From the early 1990s a series of critiques towards the Tutelary System started to take shape. The UNCRC brought to attention the rights not being granted nor respected by the tutelary procedure and institutions. However, according to one of the experts interviewed in this research, this was a concern for just a few: *‘At that time this was something that didn’t exist, no*

*one thought of a legal reform, no one saw a problem of fundamental rights in there'* (M., 2017).

However, eventually, the Penal Procedure reform and institutional changes in the judiciary made more evident these rights' violations, particularly in terms of the excessive harshness of 'protection' measures. Therefore, the new 'adult system' evidenced a '*contrast*' (Deputy Bustos, 2004:233) and '*inequality*' (Deputy Rossi, 2004:245) between justice systems. These institutional changes also led to questions of effectivity in the performance of the tutelary institutions in comparison to the results when dealing with offenders but also regarding the treatment of victims. Deputy Uriarte summarised this critique: '*Everyone knows that both the offender and the victim, in the present situation, do not receive from the justice system an adequate response*' (2004:356).

Therefore, just as the UN Convention was identified as a '*breaking point*' in the debate regarding a juvenile justice reform, the Penal Procedure Reform has also been identified by some interviewees as what '*made it* [the juvenile justice reform] *possible*' (M., 2017). This is not only in an abstract sense, but also in terms of material possibilities, as the LRPA is built over the same institutions created for the Penal Procedure reform, and the possible infractions juveniles can commit come from the same Penal Code. The procedure is also the same, the main difference being the variety of penalties between the two systems.

The most common critique coming from the political and public opinion realms was the lack of responsibility. The tutelary system was accused of not rendering young people responsible for their actions and what needed to be amended. The words of Senator Novoa are a good example of the existing emphasis on this aspect:

*'Nowadays we are in the worst of the worlds. Under 16-year-olds who present violent offences, very serious, they are not criminally liable, and in the case of those between 16 and 18 years of age, the great majority are*

*declared as not criminally liable, so they do not assume their penal responsibility'* (2004:509).

This responsibility was the result of the change in the way in which young people were considered, partially brought by the UNCRC notion of young people as developing beings towards adulthood, but mostly as a result of the cultural reading Chile made of the Convention. Juveniles were not children who could not determine right from wrong anymore. As previously hinted, they were nearly adults, as summarised by Deputy García: *'When we talk about minors with no discernment, we need to keep in mind that nowadays children of eight or nine years of age have a spectacular capacity. Children are more awake'* (2004:259). This goes in line with what Muncie (2012) comments about welfare-based juvenile justice systems shifting to justice-based systems with a focus on their responsibility and adultization.

Hand in hand with these critiques the notion of 'impunity' was also expanding. The widespread political and social use of the concept had been born from the lack of consequences for the Human Rights violations committed by members of the Armed Forces and supporters of Pinochet. Although its social meaning had been switched - just as Human Rights - towards less conflictive understandings, the Tutelary System was blamed for causing impunity by not making young people responsible for their actions. This perspective can be summarised in the words of Deputy Uriarte: *'There is a dominant impunity in the system, strengthened for underage people over the statement of their irresponsibility'* (2004:357).

However, the Tutelary System was claimed to be extremely punitive by the participants in this research, as one interviewee put it: *'Under the pretty name of protection there were all types of rights violations'* (P., 2017). For example, through the permanent institutionalization of a young person regardless of their behaviour (as the same measure could take place both in cases of protection or offending or when the young person was considered 'at risk', which was not clearly defined). Therefore, as shown in chapter one, through protection measures, children and young people could be locked in a youth

centre for much longer than imprisoned under the adult system. From where did this sensation of impunity appeared?

According to Couso (2009), it came from the rhetoric used. As they talked about protection instead of punishment, the general feeling was that young people who presented offending behaviour were not being held accountable for their actions. As a result, it spread the impression that the tutelary system was useless to both stop and prevent offending behaviour, as Senator Espina highlighted: *'Nowadays young people begin a criminal career knowing, in practice, that nothing is going to happen to them'* (2004:498). Couso's argument gathers strength when taking into account the words of Minister of Justice Bates: *'It is assumed that adolescents have responsibility, which makes possible the imposition of penal punishments'* (2004:240). This means the general understanding was that there was no punishment under the Tutelary System because juveniles were not officially made responsible for their actions. Now, under the new understanding of young people, this could change.

Therefore, there were too many elements adding up against an institution that did not represent Chileans anymore, and which failed to satisfy both national demands of punishment and expert and international rights' requirements. Hence, a reform was presented as the solution to end with all these critiques. The UNCRC suggestions could appear fulfilled (*'We protect the rights of children and youth by adapting our legislation to the UN Convention on the Rights of the Child'* (Lagos, 1999:13)); it could reduce the gap with the procedural rights contained in the Penal Procedure Reform (*'Similar to the adult penal procedure currently in Chile'* (Senator Zaldivar, 2005:969)); it could address problems of efficacy (*'The text known and generally approved by the Constitution Commission and by the Chamber was agreed with the purpose of reaching improved levels of efficacy in the fight against crime'* (Deputy Uriarte, 2004:356-357)); could adapt to the responsabilisation demands (*'It should be specifically mentioned that a key element of this project is the responsibility for the offences committed'*

(Deputy Forni, 2004:345)); and could solve the feelings of impunity (*'It came to be installed the idea this law was going to end with impunity'* (C., 2017)).

#### **V- The reform of the Juvenile Justice System: the strategic solution for the problems of the new democracy**

In this chapter it is possible to see how concerns about crime and security in general and youth offending in particular went gaining strength since the return to democracy in the 1990s. The result was the birth of a growing need to radically transform the previous juvenile justice. This change was influenced by a series of factors strongly related to the transformations brought by the dictatorship and the subsequent return to democracy. These two major alterations of the political order of the country generated very particular conditions for political debate and participation. Chileans had been pushed away from political life in the 1970s and 1980s. But then, in democratic times, their participation was needed again: to legitimate the new democracy; to gain citizens' attention and interests; and to compete in a more even ground for the political power to make the decisions regarding the future of the country. Politicians needed to engage the wider population; however, they were limited in the ways of doing so.

There were a series of topics that could be considered almost forbidden, because even when they were discussed they had stalled and only showed the weakness of both the Concertación and the authoritarian right-wing. There were institutional constraints as well. The military government and its authoritarian enclaves left few options for the government to carry meaningful reforms. In this context, the right-wing rose issues of security and control, topics they had been known to dominate during the entirety of the dictatorship. It became a successful strategy for political struggle in the Chilean society due to a series of factors, such as its weakened social capital, its strong commitment to neoliberalism, the remarked focus over individual participation and national participation in the global market for

status, and the sequels left by the wounds of the past now mixed with the uncertainties of the future. All elements that increased citizens' feelings of vulnerability, fear and insecurity regarding precarious stability and social status. These feelings were also magnified by the effects of suddenly facing a modern globalised world, where the political or economic instability of other nations could impact in the national reality with little control on citizens' part and little support of a State that had privatised most of its services. Therefore, they were welcoming and even demanding of a new social agreement; one adapted to the requirements and demands of a fast-changing technological world in which the old justice system was now obsolete.

A new justice system presented itself as the solution to a series of representation issues. Without the limitations left by the authoritarian regime, the justice institutions could be expanded, defined and discursively presented with enough flexibility to adapt to all social and political needs. The justice system became then the tool to channel issues of 'rights', 'security', 'values', 'modernity', distancing them from where they had been born towards a more concrete ground that had a concrete and specific solution: the creation of one single apparatus of social control. It could protect the democratic principles, to be re-defined according to the characteristics of the debates and the political positions of the actors; it could represent the cultural and social values, leaving enough space for them to be understood in more than one way; they could partially assume the debts both government and opposition wanted to leave behind; and moreover, it could validate democracy and the political elites in the eyes of Chile and the world.



## **Chapter 6: A new Juvenile Justice System**

The previous chapter addressed the developments of the need to reform the juvenile justice system, the increased public anxieties about youth behaviour and the political competition between actors and political parties to legitimate their public role and to provide something new. The present chapter intends to address what drove the reform in the direction it followed. Therefore, I will focus on the elements that shaped the discussion and the final result (understanding this as the law implemented in 2007). In doing so, I will cover the main directing influences including sources of knowledge, but also of power. The purpose is to answer the following questions: who determined the characteristics of the new law? What voices were heard in the process? What advice followed? What models? And in particular, why those and not others?

To do so, I will start by addressing the direction followed by juvenile justice populist politics after the struggle for political legitimation shown in the previous chapter. This will involve analysing what was feeding the debates. This will be followed by the analysis of how polity building worked in Chile all over the reform of the Juvenile Justice System. Finally, I will refer to the result of all these struggles for power on the shape the new Juvenile Justice came to have. This chapter, similar to the previous one, will build on quotes of the interviews and the key documents analysed for this research. The documents quoted involve the 'Historia de la ley 20,084', the 'Historia de la ley 20,191', the annual presidential speeches and the government programmes of the presidential elections of 1999 and 2005. When I talk about the legislative debate or just the 'Historia de la ley' I will refer to the one of the Adolescents' Penal Responsibility Act [LRPA]. I will explicit directly when talking about the 'Historia de la ley 20,191', which modified the previous legislation and took place in 2007.

## **I- Politicization of crime control and justice: The predomination of populist approaches**

As showed in the previous chapter, concerns over security and crime were installed by the authoritarian right-wing in the early 1990s. The topic provided the space to legitimise certain practices, criticize the new government and thus build the image of the different political groups both nationally and abroad. It was only after that that citizens seem to have engaged in the discourse and actively demanded more security and a better crime control system. This led to the generalized notion of a public that demanded answers from politicians regarding youth offending, crime control and punishment, as the words of Deputy Burgos in the legislative debate of the LRPA show: '*This [the juvenile justice system reform] addresses the key of a problem that worries Chileans, especially in the last months, due to the public declarations of candidates to President of the Republic: Citizens' security*' (Deputy Burgos, 2005:1095).

Juvenile justice had gone from being no one's concerns to '*A problem that, in the last time, has revealed in an extremely harsh way which seriously concerns our society*' (Senator Novoa, 2004:507), becoming the centre of political discussion. This is visible, for example, in the complaint risen by Deputy Hales during the debates: '*There is a political discussion because some claim the Concertación only wants to caress the offender. Beyond these little things of those who want to gain electoral profit from this issue...*' (2005:1037). In consequence, and as the previous chapter evidenced in relation to legitimize the new political elite, juvenile justice gained increasing presence. This politization of the topic was also recognised by some actors during the legislative process of the Adolescents' Penal Responsibility Act [LRPA], for example, in the words of Deputy Burgos: '*The closer the elections are; there is a real fight to present and accept initiatives related to citizens' security*' (2004:348).

In consequence, this section intends to address this politicization of juvenile justice and how this, in turn, influenced the shape the new law came to have. To do so, I will start by referring to the growing focus over the topic in the increasingly fierce political disputes. This will be followed by the role of other key actors of the political scenery, such as the media and public opinion. The resulting populism will then be discussed.

### 1. Juvenile justice as a tool for political leverage

Youth offending evolved to become a topic for political competition between the Concertación and the right-wing, between the Executive and the Legislative powers, and between the two chambers of the Congress. Candidates could always use it as a tool to emphasize their capacities and criticise the opposition. This was highlighted, for example, by Senator Ruiz-Esquide: *'It hurts me that youth offending is treated not as a youth problem but as an element for political debate, as if with this the government or the opposition could win'* (2004:513). Moreover, the laws are finally decided by the Legislative, where each Chamber make their own changes and modifications. Then, the implementation is mostly dependent on actions from the Executive. Hence, if anything failed at any stage, it could also be used for political purposes. The words of Senator Espina in the discussion of the law 20,191, which modified the LRPA before its implementation in 2007, evidence how this worked:

*'In first place this is a law that should have been implemented a year ago. Back then the Minister of Justice, Mr. Bates, assured us that all the new institutions on juveniles' penal responsibility were going to be working. When Mr. Solís became the one in charge of those duties, in the government of Ms. Michelle Bachelet, he confessed nothing of what had been promised was ready [...] These are very serious crimes! I don't see what explanation will be given to the country when they are informed that the author of a crime of rape*

*with murder, for example, won't be arrested a single day, not a single day! [...] I won't become an accomplice of this!* (2007:29-31)

Therefore, disputes between political actors for representation and support (i.e. power) drove the level of attention on youth offending, the opinions allowed and the direction of criticism. Initially, the topic was addressed more generally, focusing on issues such as drugs prevention, the strengthening of the police and building more prisons, elements visible in the speeches of the Presidents in the 1990s and early 2000s presented in chapter five. However, in time, it became more directly and more aggressively referenced. By the 1999 presidential elections, it was active part of the campaigns of the two strongest candidates, who dedicated specific sections of their government programmes to the topic. The right-wing candidate Lavín, in particular, made a strong emphasis in all the failures of the justice system and all the expectations in a reform, his words have been thoroughly presented over this work, for example: *'people lose trust because they know that for every 100 criminal cases like robbery and rape, only four reach a sentence'* (Lavín, 1999:30).

The use of Juvenile justice in open confrontation and hostilities reached its peak when the LRPA was in the Senate for discussion (the second legislative stage, the first one being the discussion in the Deputies' Chamber). This happened in 2005, a year when the President, 20 out of 38 Senators' seats and the 120 seats of the Deputies' Chamber had to be elected. Once again, the strongest candidates were those representing the Concertación and Chile's Alliance [Alianza por Chile, the right-wing coalition].

This resulted in the increase of open challenges between opposing political parties, highlighting each other's failures, what represented them and the promises that could satisfy voters at all levels. An example of these attacks can be seen in the words of Deputy Cardemil regarding President Lagos government a few years later when discussing the law 21,191:

*'The issue is that the Concertación is considering each time more legitimate the use and abuse of all the resources of the State, as if they were property*

*of the ruling coalition, with the purpose of perpetuating their power. This started taking shape in the government of Ricardo Lagos and involves communicational abuse, communicational demagoguery. [...] Nothing was fulfilled. That's why the government of Mr. Ricardo Lagos has ended being similar to a Hollywood's decoration, where the only real thing is the façade of the places, but there's nothing behind (Deputy Cardemil, 2007:71).*

Accordingly, to demonstrate ruling capacity, the LRPA draft started being promoted to the next stage faster, debates were cut and postponed with the sole purpose to add speed to the process, as the secretary of the Senate summarised:

*'It is worth mentioning that the Commission emphasizes that, in order to make the legislative process of this law faster, they decided to generally approve it, and to leave for a later stage the detailed analysis of the norms'* (Secretary Hoffmann, 2004:496).

This sudden speed is in itself quite telling, considering that the juvenile justice reform had been delayed since 1995 when the first draft was written, just to wait while the Penal Procedure Reform was debated, approved and started its implementation, until 2002 when it was finally presented to the Congress. In fact, it is possible to see references to the speed of the legislative process in the government programme of the main candidates for the 2005 presidential election: Piñera (RN), Lavín (UDI) and Bachelet (Concertación).

The need to make things progress faster or to propose populist measures to deal with crime increased not only because of the election period itself, but also due to internal conflicts within political groups. For example, the RN [National Renovation] and the UDI [Independent Democratic Union], the two major right-wing political parties, presented separated candidates, and only joined in the coalition Chile's alliance [Alianza por Chile] to support Piñera in the second round against Bachelet. The Concertación was facing similar struggles, as one interviewee put it:

*'We kept having problems with the Concertación that was falling apart, right? With the Radical Party. The Minister Gómez was very upset, of course, because he had been kicked out of the Executive. In the Senate's discussion he didn't give us the votes' (G., 2017).*

The quote refers to the decision of members of the coalition to not support the Executive in the modifications to the law draft being discussed, supporting instead the opposition. Therefore, the landscape was of political tension at all possible levels, where the power was slipping through their fingers due to the spreading mistrust and disappointment in democracy described in previous chapters. This led to rapid changes in terms of the dynamic between voters and candidates. For example, the small gap between the UDI and the Concertación candidates in 1999 has already been mentioned. However, in the 2005 presidential elections the candidate to continue to second round was Piñera instead of Lavín. The trust over visible actors of the past was decreasing. In consequence, the candidates needed to change their approach, to offer something new while dealing with their promises and debts from the past and the public demands of greater security. Lavín had been a presidential candidate for already three periods, he was a known traditional figure of the conservative right-wing. Piñera instead was a newer figure, a rich businessman that offered important connections to improve the economic situation of the country, while also controlling crime. Thus, offering security in varied aspects. Regarding Bachelet, she focused on increasing public participation (Cleuren, 1997). She chose to present herself as closer to people, promising public consultation over key topics, while reinforcing security and crime control as a shared need (Bachelet, 2005).

At the same time, President Lagos' government, made sure that, although a series of debates had been postponed and thus there was no full agreement regarding the new law, it was not ready to be implemented, and it faced new changes before its implementation in 2007, the LRPA was still approved during the election period. This was described clearly by an interviewee:

*'The law is published the last year of President Lagos government, with a series of deficiencies that we could foresee they were complex, let's say, with a country structure that obviously couldn't comply with the restorative, re-integrative intentions that the adolescents penal responsibility law had' (O., 2017).*

This situation strengthens the notion of the Juvenile justice System reform as a political tool introduced in previous chapters. It could be considered that the speed of its approval, despite all the work that was still needed, was a strategy to satisfy voters concerned about youth offending, validating the actions of President Lagos' government on the matter. This in turn could increase the trust in another member of the same coalition. The strategy worked as Bachelet won the elections.

As shown in chapter two, the literature evidences that when there is a crisis of legitimacy, it is attractive to be seen as doing something, which usually takes the shape of punitive or authoritarian attitudes to battle what the majority of voters perceived as the undesirable other (Garland, 1996; Muncie and Hughes, 2002). In the context presented in chapter five, where the new political elite, political order and the government needed validation, crime became a key tool. But as democracy went progressing and the differentiation between the government and the opposition based in the authoritarian against the democratic project faded, they needed to use the tools they had to gain further legitimacy and power over the other political group. Hence, they kept relying on youth offending and offering more and more punitive measures, as it had proven to work in the past and Chile was already considered stable, democratic and a competitive market. For example, the candidate of RN, Piñera, explicitly supported the implementation of *'zero tolerance'* and of *'three strikes'* policies (Piñera, 2005:54, 59). In the same programme, he also mentioned the need to reduce conditional freedom and to strengthen the police, elements also mentioned by Bachelet in her own government programme, which had a meaningful emphasis regarding the improvement and expansion of prisons (Bachelet, 2005).

The punitive direction debates went increasingly following was associated by experts and actors of the justice system to the predomination of right-wing ideas. Although they do recognise right-wing politicians were not the only ones promoting a tougher approach. For example: *'What predominates is the highly repressive view of a political sector in particular, a lot more identified with the right-wing, obviously, but not fully external to other Parliamentarians from other political currents'* (R., 2017).

As expected, the Congress was not free from these battles for representation either. They also faced elections and looked for the reaffirmation of their previous work and the suitability to remain in their positions or to promote them towards other members of their political parties and coalitions.

Unsurprisingly, the result was an escalating contest of populist controlling and harsher approaches. At the same time, the already stated dynamic of the Concertación's willingness to compromise and make agreements, led to the sacrifice of aspects of the law project more in line with the UN Convention on the Rights of the Child to privilege discourses about security and punishment to continue in the same line of the political debates, instead of challenging them. This situation was mentioned by most interviewees, and can be summarised in the words of J.:

*'In the Senate, pro-security is clearly the criteria with more weight, and there's a prioritization. I think we have to be clear about it, we were closing a government and ready to start another. So the political pressure of both sides, the pressure to whatever publish it [the new law], or to detain it, and thus hurt this government with this idea they couldn't fight youth crime. All of that impacted in that the law progressed, I don't know if quickly, but willing to generate agreements that sacrificed a lot of the law project'* (2017).

This can be explained in different ways. It can be understood as the result of an escalating struggle following what resulted more successful at election times. It can also be seen as the consequence of having still a great number of authoritarian right-wing adepts in the Congress. For example, one of the Senators of the five members in the legislative commission in charge of the



LRPA in that Chamber had been appointed under the authoritarian enclaves. Hence, supporting right-wing ideas as well. This idea takes force when we consider the Senate was stated as the main responsible by all interviewees in this research of having turned the LRPA project into '*harsher*' (E., 2017), '*chaotic and dependant on the adult process*' (L., 2017) and '*perverted on its main aspects*' (J., 2017).

Thus, juvenile justice became an increasingly politicized topic, ever-present now in political discourses. In this process political attitudes and struggles led the reform in a more punitive direction with a growing sense of urgency. This resulted in the sudden speeding of a process that had been treated slowly and the privilege of a focus on security and control over the suggestions of the UN Convention on the Rights of the Child [UNCRC]. Moreover, in a context where the political elite was fragmenting, and a Concertación government was coming to its end, wishing to increase their political presence in the future, the opposition had the upper hand. If the Concertación did not reach an agreement with the right-wing and they blocked the legislation, Lagos' government would not have the honour of being the responsible of reforming the juvenile justice system, but whoever won the elections at the end of the year.

## 2. The Media

The role of the media was also recurrently highlighted by the participants in this research and strongly visible in the parliamentary discussion. For example, in the words of Deputy Uriarte: '*Yesterday we could see on a TV show the case of a minor of under 14 years of age who has been detained 23 times for different offences, and he is still free*' (2005:1098). The media acted as the provider of information about youth offending in the country and abroad. It nurtured politicians' views and opinions on the matter, fuelled

emotions such as fear, insecurity and anger towards juveniles, and exacerbated demands to do something about it. That something being to increase control and reduce liberties. As one of the interviewees exemplified:

*'We had some articles, in fact we had to hurry the process, we had the pressure an Informe Especial [TV show] was coming the next day of the investigative commission, and the Contacto [TV Show] was very negative, with a strong emphasis on the critics to the system, so we said: after this Contacto we are going to have serious problems to make agreements with the Mixed Commission, they are going to destroy us, our parliamentarians are going to tell us to fuck off' (G., 2017).*

Young people had been transformed in the new '*internal enemy*' (R., 2017), and were being portrayed as the '*greatest danger against people's security*' (Deputy Saa, 2004:253).

Here, it is worth to remember the role of the media all over the authoritarian regime, where only those who actively supported the government of General Pinochet or those who at least respected the censorship laws survived. Moreover, as mentioned in chapters four and five, members of the political elite were still media owners in democratic times. Showing one of the many ways in which the authoritarian right-wing still directed the discussion about youth offending and the need of a reform. For example, as it happened with Agustín Edwards, 'El Mercurio' and Paz Ciudadana. Therefore, they could promote their message though seemingly from a different source. This strategy allowed the further expansion of their interests. The result was the spread of punitive attitudes and populist decisions, regardless of the national reality and the words of experts and actors of the system to be addressed in a later section.

#### 4. Public opinion

In all this process public opinion was heavily mentioned, or at least what surveys and the media showed as public opinions and what politicians understood it to be so. Politicians claimed they were paying attention to the demands of the population. While according to the interviewees it was the voice of the public together with politicians that led the reform process: *'There was a pressure from citizens, because they want systems of penal prosecution that are efficient and effective, where youth crime is of course another element of worry to the community. So sure, the state had an internal concern around giving the message to the community about effectively doing something about youth crime'* (H., 2017).

Nevertheless, it is worth to keep in mind public demands had been started and fuelled by the right-wing through their speeches and mediatic information. Therefore, as stated in the previous chapter, it was the political elite that imposed concerns over youth offending, which in turn led to increasing requests for a juvenile justice reform. This is visible in the continuous reference to public opinion made by Deputies and Senators in the legislative debate, as Deputy Soto claimed: *'Society pressures us to publish this law as soon as possible'* (2004:363).

These public pressures and demands were identified as requesting harsher measures: *'The phenomenon of youth offending was highly influenced by the general perception of citizens regarding general crime. There was pressure for a harsher system'* (R., 2017). Point also mentioned by Deputy Hales in the legislative debate: *'The people ask for punishment for offenders; this project propose penalties for adolescents who commit offences'* (2005:1038).

However, at the same time, the general population is described as *'ambivalent'* by various interviewees (P., 2017; N., 2017; C., 2017), emphasizing how the focus on juveniles was strictly limited to request more active measures to control their misbehaviours. But there was little involvement or plain rejection to have youth centres close to their localities,

or regarding juveniles needs and the guarantee of their rights on a daily basis.

Therefore, public opinion seemed to have followed the pattern evidenced in international research (Indermauer and Hough, 2002). This means they are not such a strong actor, but mostly the representations or the widespread belief of what the 'general population' demands, regardless of what they actually know and think about the topic at discussion (Green, 2009). In consequence, they become another resource to grant the lead in a series of social issues by a determined group -the already existent political elite-. In consequence, politicians used the penal realm to be seen as doing something in a series of social issues, diverting attention from what was left unattended or the inappropriateness of the solution. This allowed the elite to obtain a political support that came, mostly, from intense passing emotions of fear and rage, instead of actual knowledge, debate or prolonged well-thought concern on the matter.

The result was a populist approach in juvenile justice, which in turn promoted fast and strong measures that seemed like 'doing something' instead of effective policies. As Goldson (2002) emphasised, political priorities have more impact over policy formation than expertise does. This led to a radical reform from the tutelary institutions dedicated to 'protection' towards institutions that allowed the new focus on strengthening punishment, surveillance, reduced diversion and reinforced imprisonment. That is, despite having new rules that respected the rule of law and a new procedure that allowed them a defence and a trial, the situation for young people in trouble did not change much. Juveniles were still subject to a meaningful emphasis on their removal from the community to be locked in centres under the custody of the State, they were still subject to wide State control, and there were not many other sentencing options available.

Of course, that is not to say everyone supported these harsher measures, as voices rose against them (such as Senator Ruiz-Esquide for example). However, they were dismissed while public demands and politicians support

for more punitive approaches predominated. To those demands it is attributed the reform that took place, the characteristics of said reform, and the moment in time when it happened.

## 5. Populism and Juvenile justice as a scapegoat

Given the previous analysis, it seems then that the juvenile justice reform was born from elite driven pressures and interests to find a scapegoat to all the new anxieties and feelings of insecurities, it could also act as a diversion (just as the Penal Procedure reform had) over all the issues still hanging from the transition from dictatorship to democracy, and in doing so provided a tool for the political conflict between two forces that seemed unable to fully gain support from citizenship. In time, the demands of a reform were also reinforced by experts who did not agree with the tutelary approach and the pressure of the UN Committee and UNICEF regarding the clash between their suggestions and the tutelary institutions, but also, by public pressure and the media (also driven by political interests). The result was the prioritisation of political and populist decisions, which led to the reduction of a childhood policy towards a juvenile justice system, as evidenced in chapter five, and a new system that relied over 'adult justice' principles, actors and institutions, as shown in chapter one.

In this process it is worth wondering why certain voices were more listened than other, why the demands of the authoritarian right-wing predominated? Why populism and more punitive perspectives triumphed? According to Garland (1996) punitive responses are a symbol of weak State authority. This makes sense in the Chilean case as the country was still struggling in the legitimisation of its democracy. Moreover, according to the interviewees, and as evidenced in Piñera's government plan, there was some influence of some specific models, for example regarding 'three strikes' and 'zero tolerance'. The following section then will dedicate to analyse the polity building process of the reform and the main drivers within it that shaped the

'final' product in 2007 when it was implemented. In doing so, it will address what determined some voices, actors and models had more impact than other in the reform process.

## **II- Juvenile justice Polity building**

All through the development of the perceived growing need to reform the Juvenile Justice System, the design of the project, its legislation and final approval there were a series of actors and institutions battling for the recognition of their own ideas. Initially, those who supported the Tutelary System opposed a reform, claiming the main problems could be solved by '*strengthening what we have*' (M., 2017), as one interviewee put it. Eventually, due to the need to legitimise the new democratic regime and the pressure of UNICEF, and the UN Committee, voices in favour of reforming the Tutelary System prevailed. By 1995 drafts were being written. However, it still took until 2002 for the law project to be sent to the Congress for legislative discussion.

The participants in this research claim the discussion of the project was deferred from 1998<sup>9</sup> until 2002 because the Penal Procedure Reform was '*priority*' (H., 2017; J., 2017), and all other issues were '*delayed*' (M., 2017; C., 2017). For example: '*The Penal Procedure reform goes first hierarchically and then it comes this*' (M., 2017). This talks about some actions and ideas being left behind while some others take predominance. For example, to address crime control and adult offending in a first step and the radical transformation of juvenile justice later on, building over the same institutions instead of, as some participants in the process suggested, having '*a panel formed by a penal judge, a family judge and a non-lawyer judge even*' (G., 2017).

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<sup>9</sup> Year when the last draft was sent, which was then published in the book '*Infancia, ley y democracia en América Latina*' edited by García Méndez and Beloff

Therefore, the reform of the Chilean juvenile justice system evidences a constant struggle between different institutions, actors and interests. All in a context where the lack of consideration for professional, research of academic knowledge predominated, to be shown along the chapter. It also highlighted the prioritization of the beliefs and ideas of a certain political group and what was understood as public opinion (which had been promoted under populist strategies) over the rest. This section will intend to evidence the interests that predominated in the making of the new law itself. Doing this involves analysing power distribution in policy making in Chile, and the key elements that gave more strength to certain fractions of power over others.

It is worth analysing then, why certain notions were able to displace others to the point the final result was considered as radically different from the law draft sent to discussion by all interviewees? The law project went from three years of maximum imprisonment penalty to 14 and 15 year-olds and five years maximum imprisonment penalty for 16 and 17 year-olds to a new maximum of five and 10 years respectively. It also went from no minimum imprisonment term to one year minimum. And the specialization criteria was never put into practice, because prosecutors are not officially trained to treat young people differently from adults in court, and the same people see adults under the penal system and young people under the LRPA with no differentiation.

Therefore, the perception of most interviewees, as the words of H. already evidenced in the previous chapter, was that:

*'The project goes deforming and it distanced more and more from the standards of the Convention on the Rights of the Child and it got closer and closer to, let's say, an adult penal law, harsh, where specialization lost its place and logics of an adult penal law start to directly rule' (H., 2017).*

The answer to why some ideas prevailed over others lies in the distribution of power to make decisions and redirect the law debates, together with what influenced those with the power to decide, in terms of how they understood youth offending and what juvenile justice institutions should do or represent.

It also had a lot to do with the authorities being seen as doing something, more than the quality of what they were doing. The present section intends to evidence how these sources of influence worked and how the interaction they had with people with different levels of power impacted on the Juvenile justice System that replaced the Law of Minors.

Hence, the present section will be dedicated mostly to the legislative debate where the shape of the law, its regulations and procedure were defined. However, it will not necessarily follow a chronological order, because the main element is to clarify the influences and power conflicts directing the process. In consequence, I will start by analysing the power distribution in the legislative discussion among the different actors and institutions. It will be followed by the connections between them and how that nurtured their decisions. The final subsection will dedicate to analyse what voices were heard and why.

### 1. Power distribution in the legislative stage

The law project changed considerably in each stage of the legislative process, evidencing differences between the two Congress Chambers over the final law<sup>10</sup>, being the Senators those with more leverage in the final LRPA. This situation can be summarised in the description provided by one of the participants in this research, which also represents the opinion stated by all other interviewees:

*‘There is a key moment in the discussion, which is when the law project finishes the first procedure, in the Deputies’ Chamber, where even when it had some changes and the reduction of some of the positive spaces I*

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<sup>10</sup> In Chile the laws need to be approved by the two Chambers of the Congress, Deputies and Senators. This means the project needs to be approved by the Chamber that initiated the legislative process. In the case of the LRPA it was in the Deputies’ Chamber. Then, it goes to the other Chamber, in this case the Senate. If modified and approved, the project goes back to the original Chamber. If the modifications are accepted the Law is published. If not, a Mixed Commission with Deputies and Senators is formed to make a decision.



*mentioned, it kept being a project on those lines: strong diversion measures, moderate punitive responses. But when it goes to the Senate, given the political-institutional constitution of our Congress, it is in the Senate where, I'd say, the law project is perverted in its main aspects'* (J., 2017)

The legislative process still involved the creation of a Mixed Commission with both Senators and Deputies trying to find an agreement, but as one interviewee stated, it did not really altered the changes imposed by the Senate, in his own words: *'The main responsibility was in the Senate. Then the Mixed Commission approves the project in general, a few discussions, but the final project is quite similar'* (R., 2017).

This demonstrates a difference in the work of the two Chambers. It was in the Senate where the project turned more punitive, distancing from what experts wanted for the new juvenile justice system or what the UNCRC recommended. These were elements interviewees considered were well represented in the initial draft: *'I think the Executive did a great starting job by submitting a project in line to the mandatory prescriptions of the Convention on the Rights of the Child'* (R., 2017).

Likewise, the work of the Deputies' Chamber was praised by the interviewees as something still in line with what they expected from the new Juvenile Justice System, as the words of L. (2017) evidence: *'It was a good project and a good project comes out from the chamber [Deputies]. In terms of the principles that inspired this group of people, which had a strong base in the formation of Human Rights and a strong base in the formation of childhood rights, youth rights, and they knew a lot on the topic'*.

The result evidences the power distribution of the legislative Chambers: The opinion of the Senate predominated. This is particularly interesting when keeping in mind that, as explained in chapter four, one of the authoritarian enclaves left by the dictatorship were the appointed Senators, who remained in place at the time of the legislative discussion of the Adolescents' Penal Responsibility Act. This granted the authoritarian right-wing with the majority in the Commission in charge of the LRPA, as there were two Concertación

Senators, two right-wing Senators and one appointed. As already stated in previous chapters, this position was eliminated in 2005, the same year the law was approved, but all the discussion had been with them still in place. This continuation of the actors of the authoritarian regime over 15 years after the dictatorship ended talks about this struggle to legitimise democracy under the rules set by the dictatorship, but also about the continuation of authoritarianism into democracy. The Senate can thus be considered a key political institution filled with powerful political actors.

The interviewees also mentioned conflicts between the Executive and Legislative powers, which can be summarised in the following words: '*The [Deputies'] Chamber was strongly influenced by the Executive*' (I, 2017). Most interviewees claim, and it is visible in the law drafts in the 'Historia de la ley', that there were more similarities between the initial efforts of the Executive and the project approved in the Deputies' Chamber before going to the Senate. However, interviewees also highlight the lack of leadership of the Executive over the legislation in general, as the words of L. (2017) exemplify: '*There was not much leadership from the government, and I would say [...] if I could identify the big responsible on this, it was kind of the Executive, given the role they have as co-legislators*'. Here it is worth to remember that the law was approved and published in a year of tight presidential elections. Therefore, the interest of the Concertación was more on having a product than on the characteristics of said product.

These mixed feelings towards the role of the Executive could relate to the fact that, even though the Executive can send law projects and representatives to participate in the discussions, the laws are voted and decided, at the end of the day, by the parliamentarians in the Commissions they form and by the Chambers. Therefore, the influence of the Executive can be understood mostly in terms of drafting and political agreements, a strategy already described in chapters four and five as popular amongst the members of the Concertación.

Under any circumstance, it is key to keep in mind that the Executive was criticized for a *'deficient performance'* (C., 2017). But the final result is attributed, by all participants in this research, to the Senate and the decisions made in that legislative stage, which *'dismantled'* (L., 2017), *'perverted'* (J., 2017) and *'erased'* (R., 2017) many of what Deputies had done and that had the experts' approval (which will be described in greater detail in a later section). It was their opinion that predominated.

In fact, the main responsibility that can be attributed to the Executive in the law that was approved was the willingness to sacrifice aspects of the project to gain speed, as shown in chapter five, which created the circumstances for more punitive approaches to predominate in the debates despite they did not have the support of the whole Chamber (Congreso Nacional de Chile, 2005). There was no time to fight them and propose something else. As one interviewee explained:

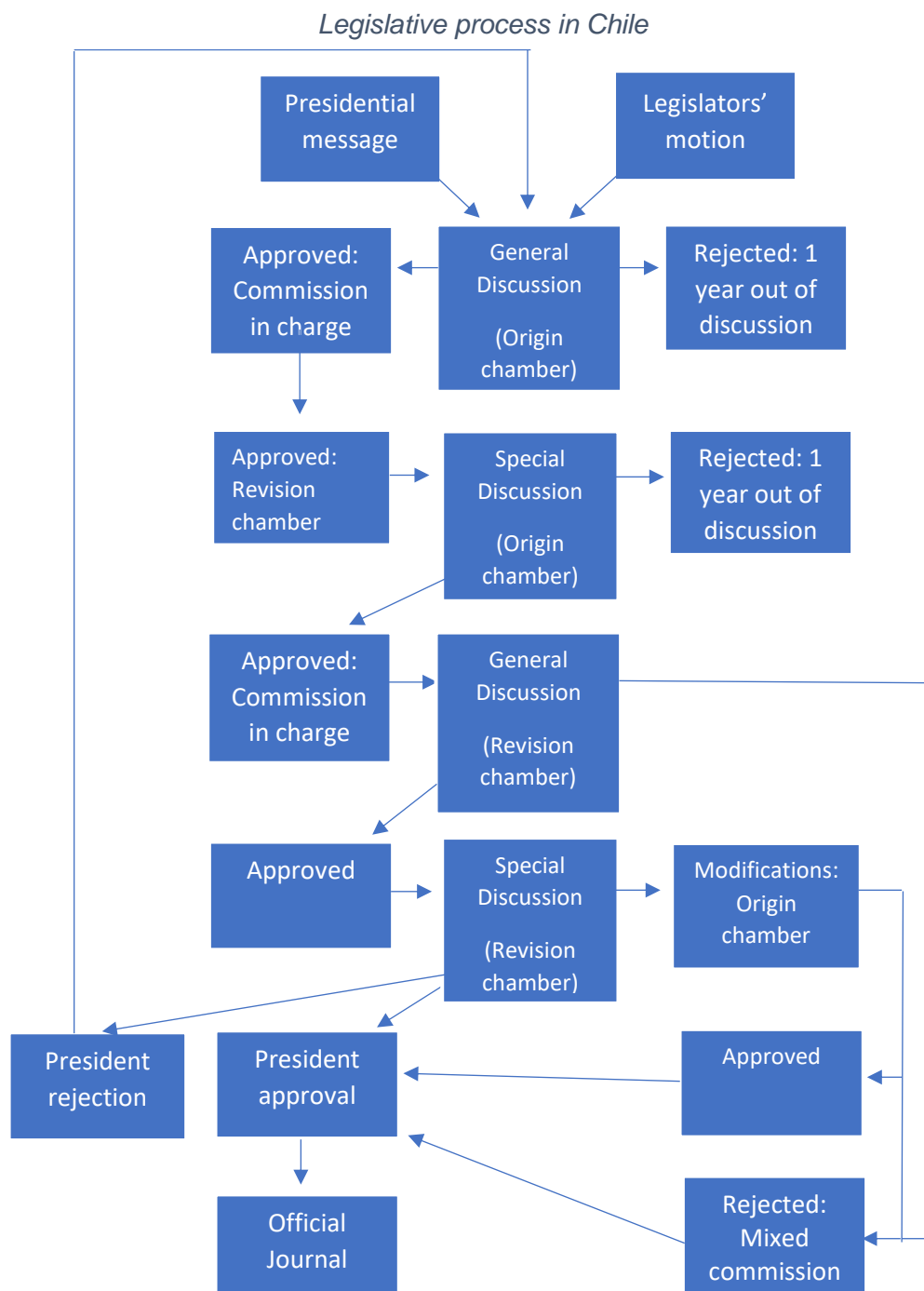
*'When the law is approved against our suggestions as a commission, it's finally approved in the Parliament, I had a meeting with the Minister in his office a few days later and the Minister said to me: I received the order from the President at it was: 'Minister, the Adolescents' Responsibility Law won't be postponed a day'. There was a very tense political and media climate in terms of youth violence, youth offending and the impunity of the youngsters' (O., 2017).*

Although some parliamentarians kept the hope the law would have to go back to the Congress for some modifications and planned to use that chance instead, as Deputy Guzmán explained it:

*'We are clear [we know] that at the moment of applying the law there is going to be a detection of many mistakes and gaps that will require some fixing. A law of this nature requires adaptation, so it will have to come back to the National Congress. That's why I remain calm' (2005:1101).*

Of course, the legislative process determined by the Constitution also plays a part here, as it is a convoluted process with rules such as that if the project

does not obtain the majority of votes in certain circumstances, instead of continuing in debate, it is rejected. For example, if the project after modifications is rejected by the Chamber in which it was presented for discussion for the first time, it has to start from scratch again and cannot be presented for a full year. Only if the project was started by the President, they can ask the project to go to the other Chamber. Likewise, if there is no agreement between the two Chambers a Mixed Commission with both Deputies and Senators is formed. If after modifications the project is rejected it meant there will not be law in all aspects rejected. The process can be seen in the following chart:



In this way, if the juvenile justice reforms did not receive a majority of votes, it would be rejected and would have to be entirely redrafted, delaying its presentation for at least one more year. This forced the Chambers to approve elements many, albeit not the majority, disapproved, just to avoid the risk of the whole law being rejected or having a juvenile justice system where many of its dispositions were not regulated or clearly defined. This situation is evidenced by Senator Viera-Gallo at the end of the discussion of the LRPA:

*‘After a long debate the Commission, with four votes against zero –because there was no other solution –agreed the maximum penalty for an adolescent older than 16 years of age and younger than 18 years of age is of 10 years of imprisonment’ (2005:963-964).*

The Senator expressed his dislike for the measure, but it was accepted anyway by the majority of the Commission where he participated. This system gave more leverage to those who had less to lose by letting the law stay back, be rejected or continue in debate, in this case, as it has been previously stated, the authoritarian right-wing. They could take a rigid attitude because they had enough presence on the Chamber to do so and stop the laws promoted by the government if the proposed agreements did not convince them.

Interestingly, the law did go back to the Congress for modifications, under the law 20,191 in 2007. However, four of the five Senators identified as key responsible of shifting the LRPA towards a more punitive approach were in the new Commission again. To them we need to add the presence of Senator Larraín [UDI], who started the Indicación, that is the request to amend the law in certain aspects, and who was strongly active in the debate. The discussion included extensive criticism of the Concertación governments of Presidents Lagos and Bachelet, as we can see for example, regarding the unfulfillment of Bachelet’s campaign promises regarding some aspects of juvenile justice:

*‘I want to remind you all that the implementation of this law, the law 20,084 was one of the elements of the Presidential campaign of President Bachelet.*

*In 2005 citizens were promised that, given the sad start of many youths in the crime world, measures were going to be taken, they were going to be punished, but they were also going to receive the possibility to rehabilitate [...] No one could deny the good of the law. It was approved, the presidential election won by the candidate that promoted the implementation. So, it was the government's turn to do their job' (Deputy Turres, 2007:68)*

The criticism referred to the law not being ready for implementation, disregarding the role of the Legislative on that situation claiming they would not assume the political consequences for the delay, as Senator Espina exclaimed: *'I will not become an accomplice of this!'*

Moreover, in 2006 there were massive students' demonstrations all over the country to protest against the education system left by the authoritarian regime. The media was filled with images of young students against the police or being detained, bringing the issue of security and a juvenile justice system forefront again. At that point, again, the Executive played a central role. Due to political pressure, the decision was hurried once more, and implementation, despite the conditions were not ready, could not be delayed, as an interviewee recalled: *'Back then we knew the law had many problems [...] But Solís<sup>11</sup> told us: 'look, you can do whatever but the law is not going to change, we are with the implementation now, so we cannot mess with the text' (M., 2017).* Therefore, political pressure of being seen as doing something was bigger than doing it correctly, as the words of D., evidence: *'There was a pressing need to approve the law to give a sign to the public opinion that we were doing something in terms of youth crime' (2017).*

Therefore, in the reform process of the LRPA the document was presented by the Executive and written by the experts. It had some minor alterations in the Deputies' Chamber to be dramatically modified in the Senate who gave to it its final shape despite the opposition of Concertación and leftist members of both Chambers. Nevertheless, the situation could have had a different result if the Executive had not been so willing to hurry the process to the

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<sup>11</sup> Minister of justice at the time

point of sacrificing key aspects of the law, to be addressed in a later section. Then, when a second chance rose through the Indicación Larraín, it was started by members of the authoritarian right-wing to make the LRPA harsher. In this process there was a strong presence of legislators from the right-wing. There was also political pressure coming from their criticism to the capacity of the Concertación to fulfil their promises regarding the implementation of the juvenile justice system. The result was a fast process which focused more on the populist result of having a new punitive law than in the feasibility of its implementation, the success of its application or the quality of the project.

## 2. An unknown landscape and the predomination of political views

Besides political interests, the lack of knowledge over the topic at discussion played a key role. This lack of expertise in Latin America was also commented by Beloff and Langer (2015) when talking about juvenile justice in the region, while interviewees directly highlighted the lack of research regarding youth offending in Chile:

*'Where are the studies about crime? Where? In the 1970s, 1960s, of the time, nothing. There was the system here and there, and poor people, and a thousand ideological stuff, or on the other side Chileans as the thief race [laughter], but of everything there was very little' (M., 2017).*

As a result, there was plenty of space for politicians and the general population to legitimise their own personal views and opinions on the matter, regardless of the accuracy of such claims. In the words of one interviewee:

*'Today a guy who is a cabinetmaker can talk about criminology. The time when we were the ones talking about this is over. Everyone has an opinion now, knowing or not knowing, there is nothing concrete' (M., 2017).*

Moreover, the role of personal experience or beliefs was increased by the way the Chilean Congress works. Deputies and Senators do not need to be

experts on the matters at legislation. They are politically elected actors, except in the case of appointed Senators. Thus, they represent political parties, the geographical location that elected them, or their own interests. What is expected is that they have advisors that can provide them with the knowledge needed to make the legislative decisions, which in the case of the juvenile justice discussion was not of much help, as one interviewee pointed out:

*'The majority had little knowledge. I'm not one of those who expect politicians or Parliamentarians to have plenty of knowledge. I kind of hope they have good eye to pick advisors. But there was a lack of knowledge in general' (J., 2017).*

Following from that, it was repeatedly emphasised by the participants in this research that most Deputies and Senators were simply *'ignorant'* on the matter (P., 2017; A., 2017; F., 2017).

Perhaps the lack of evidence and solid knowledge on national context right at the period of discussion of a new law may be surprising for some. However, in Chile it can be understood from history. As chapter four stated, in the authoritarian regime a series of areas of knowledge had been banned, including sociology and criminology. Thus, leaving little space for research. Moreover, trying to access government information could end in death, a lot of data was erased and what was left was not really trustable after being handled by General Pinochet's team.

Moreover, as we saw in chapter four, government positions were reserved to those supporting the authoritarian regime, despite their individual area of expertise. This is visible in the division of the National Ministries between the Armed Forces in the military government Junta, but Constable and Valenzuela (1993) also evidence how many actors got or lost their positions in the government just because of this. An extreme example of this is General Leigh, who after having conflicts with General Pinochet was kicked out of the Junta, despite the Decree Laws that made it almost impossible to happen. Therefore, knowledge or expertise were clearly not needed. The only field with an exception was economy, led by the technocrats, who also



supported the authoritarian regime. Once democracy returned and political parties re-organized. The old actors remained. Again, under the principle of commitment and faith, whatever to the dictatorship through the authoritarian right-wing, to the economic model, or to the Concertación, as the major force against the past. Once again, ruling was about supporting groups.

At the same time, there was a lot of pressure for a reform, little time to make changes, citizens who felt disappointed by democracy, cases of corruption, a tight control on national economy, and a weakened State. Thus, leaving research for the future or for the private actors who could and were interested in affording it, instead of as a key responsibility of public institutions. The effect of all this probably increased by factors such as the exile, death or disappearance of many leftist-thinkers, academics and experts; while those who had survived had been stripped of all power and position for years. There was fear in the population, there were other priorities, and there was a lack of access to government data which was also low quality.

In consequence, the generalised perception of increased youth offending was permanently reminded with mention to dramatic statistics referenced in the legislative debate, for example by Deputy Monckeberg: *'From 1995 to 2002 offences perpetrated by minors have increased dramatically: 700% in robbery with violence and 400% in theft. It has also increased the rate of crimes perpetrated by females, and let's not even begin to talk about high school juveniles'* (2004:268). Although there is no evidence to validate such claim, and the Deputy in question provides no source for his information, which is also not shared by anybody else.

Overall, experts opposed to most of the notions, understandings and measures proposed by members of the parliament. For example, the focus on individual responsibility was highly criticised: *'There was a critical view of the guilt of other people without a minimum capacity to understand that some actions, symptoms, signs are expressions of the adaptation of these people to contexts of harm, exclusion, problems, scarcity, and trauma. Here if you behave wrongly is because you took the decision of doing so'* (O., 2017).

However, experts' voices were not really heard, and the political priorities continued their way, even replacing and erasing many of the elements of the LRPA draft that were in line with the UNCRC guidelines. For example, through adding a minimum length to imprisonment sentences, reducing diversion measures and doubling the maximum penalty from five to 10 years of incarceration (Congreso Nacional de Chile, 2007).

Therefore, even though experts did have an active participation as the people who wrote the law draft, and they had the opportunities to go and present evidence or raise some issues in the Congress, they repeatedly expressed difficulties to influence those making the decisions: Parliamentarians. Who are described as prioritizing institutions that were more in line with their previous mindsets than reliable information contradicting such perspectives, situation evidenced by a few interviewees: *'They even operate from distrust: if the person from the Defendant or from UNICEF or 'that' academic, then it must be the opposite. And believe me, I saw that happen'* (J., 2017).

This goes in line with the continuation of authoritarian practices of the past as well. As Cleuren (2007) highlights in his analysis of 'local democracy and participation in post-authoritarian Chile', most policy-makers in Chile consider people ignorant, NGOs not representative of their voices, and citizens' participation inefficient.

Moreover, due to cultural influences from the past, there were some remnants of the tutelary way of understanding young people as well. For example, the State was still seen as in charge of '*rescuing*' them (Deputy Saa, 2004:358) from the life they had before or understanding punishment as a way of protecting them, as Senator Espina claimed:

*'It has been said the project raise the sentences defined by the Deputies' Chamber and that it has a repressive character [...] I ask your attention to demonstrate that the project is absolutely protector of minors [...] The minor is absolutely subjected to the whole network of State protection in terms of education, social integration and prevention of drugs and alcohol abuse.*

*There has never existed in Chile such a high level of protection for minors as the one proposed in this project' (2005:964-965).*

Therefore, a paternalistic understanding to re-educate them remained, as it was hinted in the first chapter. For some interviewees, this meant a lack of interest for the reality of young offenders, reinforcing the notion the focus on young offenders was a political tool instead of a serious concern about the needs of this population. For those interviewees the debate was mostly a show:

*'The great majority [of parliamentarians], I'd say they had a pretty irresponsible attitude, and quite neglectful, I almost dare to say that many of them voted without having ever read [the law project], because they had a previous idea, because they had a political-values conviction' (O., 2017).*

This evidence the prioritization of certain voices over other, in what was reduced to a conflict between rights and security, as one interviewee explained: *'We had the huge wave towards security, especially this idea of young offenders, we have to do something with them. So, we had those two positions, the populist politics and the one on the side of international human rights' (A., 2017).* Experts identified themselves in line with the rights' approach, mostly represented by the UNCRC. While politicians, who kept their populist focus on security continued in the same line. The perception of the participants in this research is that politicians' rhetoric won the battle and continued over children's rights recommendations: *'What you could see was a very favourable landscape for repressive measures. Parliamentarians wanted to gain points by presenting the harsher projects, more punitive, more penalizing. All without looking at the overall system, and without considering resocialization' (D., 2017).*

This, of course, rises questions of what lied behind the focus on juvenile justice. If it was not going to be nurtured by evidence, the Chilean reality, the wellbeing of juveniles in trouble, to respect their rights according to the UNCRC, what was the purpose of all this debate? It seems to be, once more, that what was driving this sudden interest on the issue, and the

overwhelming need to do something about it was more based on political intentions than in the real national situation. Perception that increases when considered that between 1995 when the need to fully reform the juvenile justice system is widely recognised, to the moment when the drafts written since then are finally presented to the Parliament, in 2002, there are seven years. And from there to the actual implementation of the law there were five more years of spread sessions and debates. Hence, it seems the urgency was mostly rhetoric, as the process only gathered speed at the end, with strong changes to the law project between 2005 and 2007.

### 3. Networks

The previous subsection described the reliance on anecdotal information and the lack of research about youth offending and juvenile justice. Nevertheless, it is important to dedicate some time to analyse the sources of knowledge available, what drove their selection and the influence they had in all the actors that determined the conditions and characteristics of the new Juvenile justice System. The first element to keep in mind is that the information, evidence and knowledge that influenced the LRPA can be partially understood in terms of access and availability. It was shaped by the connections between actors and different institutions, and even different international models.

For example, the suggestions of the UNCRC reached a strong discursive presence due to the process of legitimization of democracy already described, but also, as shown in chapter one, because of an active presence and pressure of UNICEF in the Latin American region. UNICEF did not only generated pressure over Chile to reform, but it also united a small and tight community, as one interviewee explained: *‘One of the variables developed in the Latin American region relates to the creation of a scientific community, which influenced most of the Latin American reforms. This scientific community was very small but also very close’* (H., 2017). They promoted

juvenile justice reforms in Latin-America all over the 1990s, after many countries had left behind their authoritarian regimes, ratified the UNCRC, and developed guidelines, also contacted one of the key experts who wrote the law drafts of the LRPA before the legislation, Miguel Cillero. In that community, for example, he met Carlos Tiffer, the person who promoted the Juvenile justice reform in Costa Rica, model strongly used by the Chilean reform. This talks about a connection between certain actors, approaches and international experience to be used as a model.

At the same time, it raises some questions regarding the factors behind the weight different institutions had. The interviewees mentioned a series of institutions that played a part; *'UNICEF was very important, Opción<sup>12</sup> was very important, Hogar de Cristo<sup>13</sup> was very important, Paz Ciudadana had its part too, from what I remember, and in fact all of them participated in one or another way in the experts' commission'* (L., 2017). But why those institutions over other NGOs that also worked with young people in trouble? The answer lies in their connections.

For example, the expert previously mentioned, Miguel Cillero, who participated writing the drafts, worked in the Hogar de Cristo, the place where the person in charge of the Minors' Department of the Ministry of Justice from 2004 until 2008, Francisco Estrada, had also worked. Moreover, Estrada had also previously worked in Opción, another institution widely mentioned as a key participant in the reform process.

Regarding Paz Ciudadana, for example, as previously mentioned the institution was connected to politics as it had been created by a supporter of the authoritarian regime who also owned the biggest conservative newspaper in the country: 'el Mercurio', which established a fast and solid connection

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<sup>12</sup> NGO that works with SENAME providing programmes for intervention with young people in need of protection or under rehabilitative measures by the Chilean Juvenile Justice System.

<sup>13</sup> Charity that focus on issues of poverty and marginalization. Institution where many of those who participated as experts in the LRPA reform process started working in programmes that helped young people in trouble.

between the Paz Ciudadana and the media. Moreover, one of the Deputies<sup>14</sup> at the time with widespread participation in the legislative debates, had been chair of Paz Ciudadana before. The institution had been created with the purpose of studying crime from a technical perspective outside from political interests (Folch, 2002). However, despite this stated objective, the institution worked with politicians and remained close to them, following a similar pattern of the ‘apolitical’ attitude presented by other influential institutions created by supporters of the authoritarian regime and part of the discourse of the authoritarian government.

The influence of the institution is visible in the words of President Lagos: *‘Some private institutions, such as Paz Ciudadana Foundation, have made great contributions’* (President Lagos, 2000:15). This evidences what networks could do to position institutions in the centre of policy making. Paz Ciudadana had been created by a supporter of the authoritarian right-wing, nevertheless, it was referenced as a key contribution by a Concertación President. By being close to the political elite it was possible for them to influence decisions and constitute as a respectable source of information, while other institutions that lacked such connections were perhaps left outside of the discussion, or as it happened with the opinion of the Public Defendant, less taken into consideration by legislators.

From the information generated in the interviews and what key documents as the ‘Historia de la ley’ could inform me, I realised there was a complex, dense network of relationships and influences underneath the reform. I have consolidated this information into networks maps, which I present below. The purpose of the maps is not to mention all possible institutions and actors, as it would be even more complex to understand, and much more space would be needed. The purpose is to summarise the interactions between the key institutions and actors that repeat along the process.

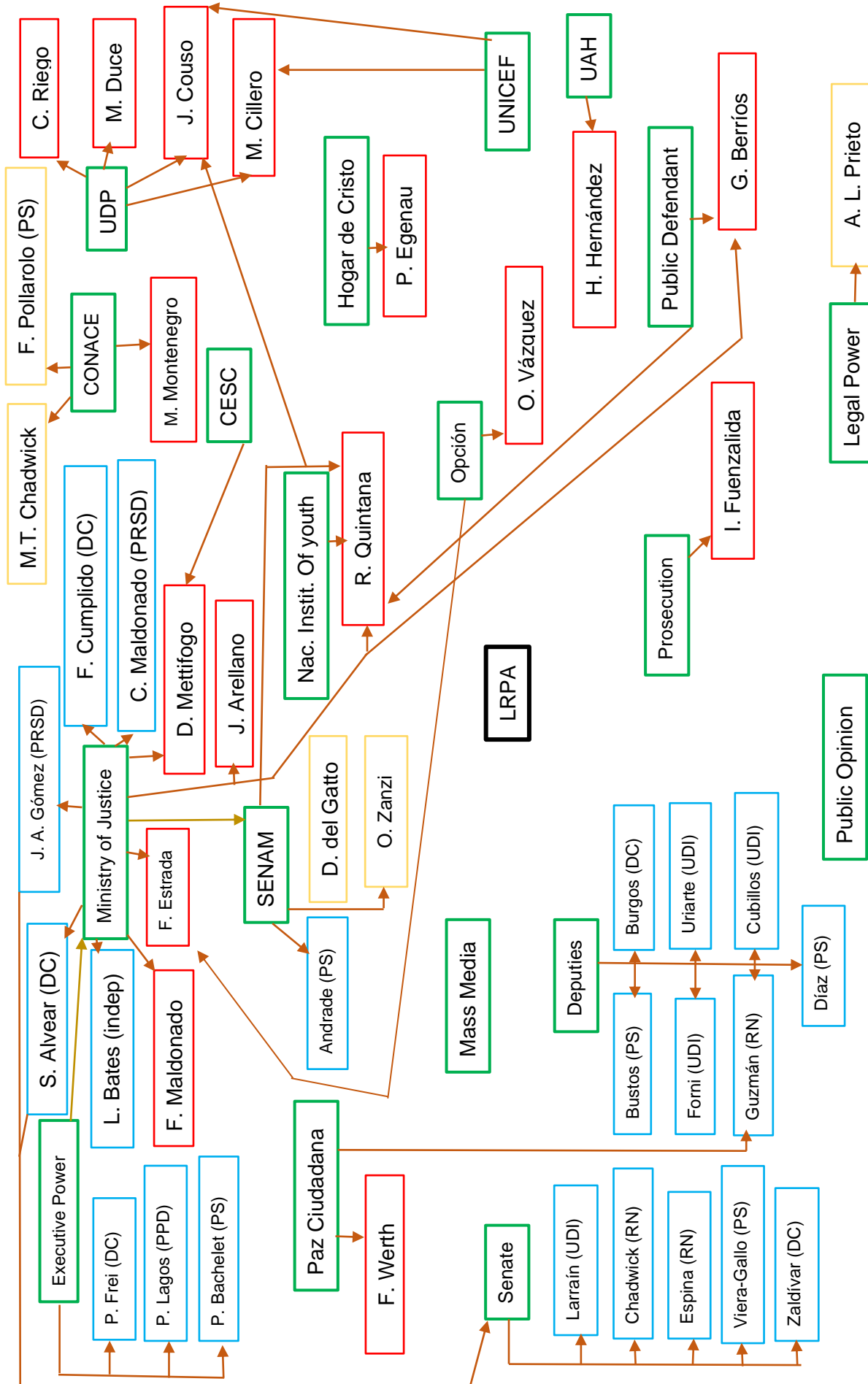
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<sup>14</sup> María Guzmán, member of National Renovation [Renovación Nacional, RN], right-wing political party to which Piñera, the candidate for presidency that competed with Bachelet in second round in 2005, also belonged. Piñera since then has been elected president twice (2010-2014 and 2018-until present).

For example, in the Deputies' Chamber there are 120 Deputies. However, I only mention seven. That is because those seven were repeatedly named and identified as key actors in the reform process. Something similar happened with The National Service of Minors [Servicio Nacional de Menores, SENAME], that had much more staff involved in the process. Nevertheless, in the legislation process the names that kept appearing and were recalled by the participants in this research are the ones in the maps. Therefore, in these networks maps it is possible to find the most visible faces and representatives of certain institutions at the time.

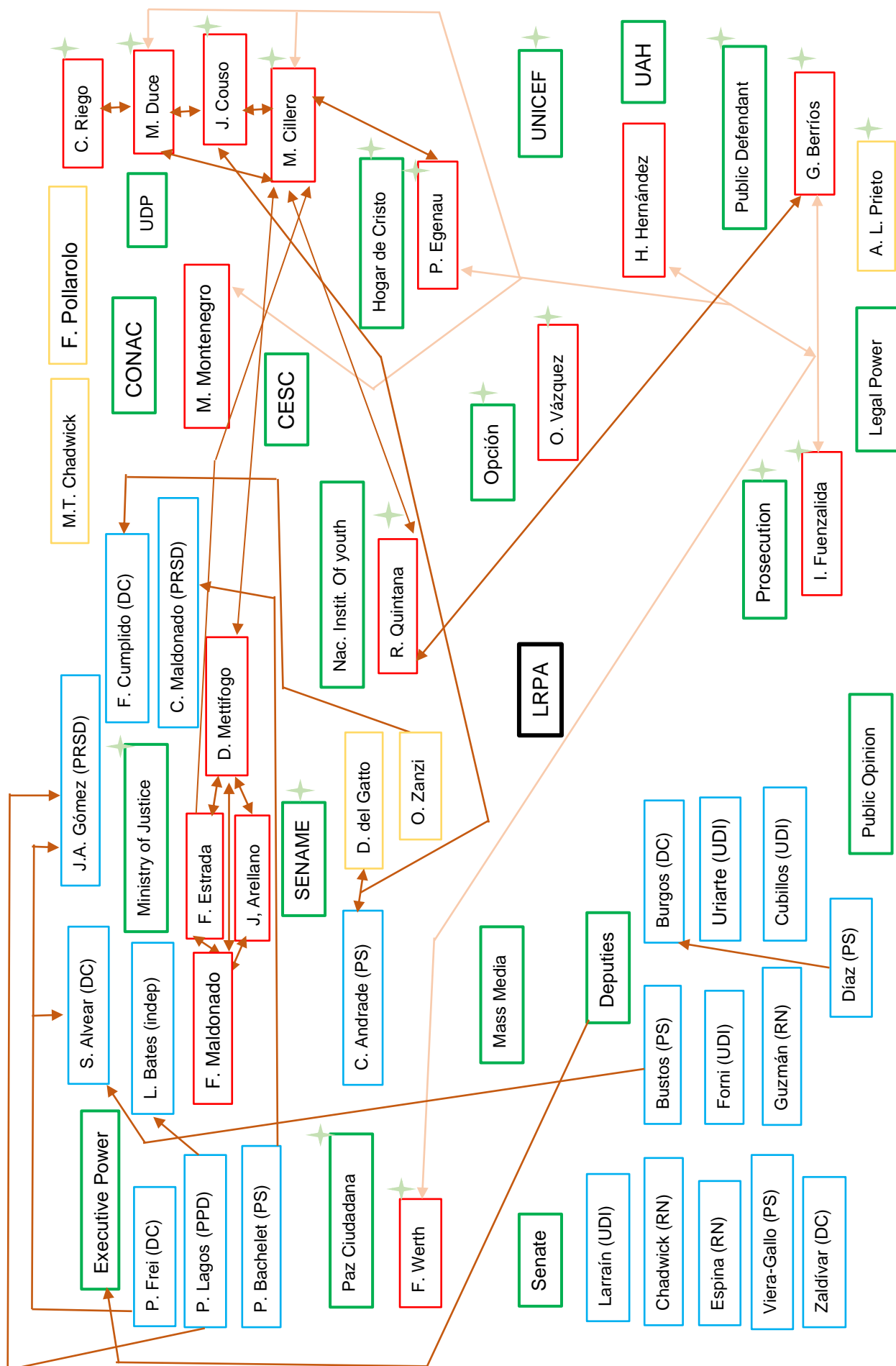
I have divided the information in three maps to facilitate the understanding of the existing connections.

Institutions (green) and key people involved in the change process (Blue: politicians; Red: experts; Yellow: employees who participated). Brown lines: Working relationship

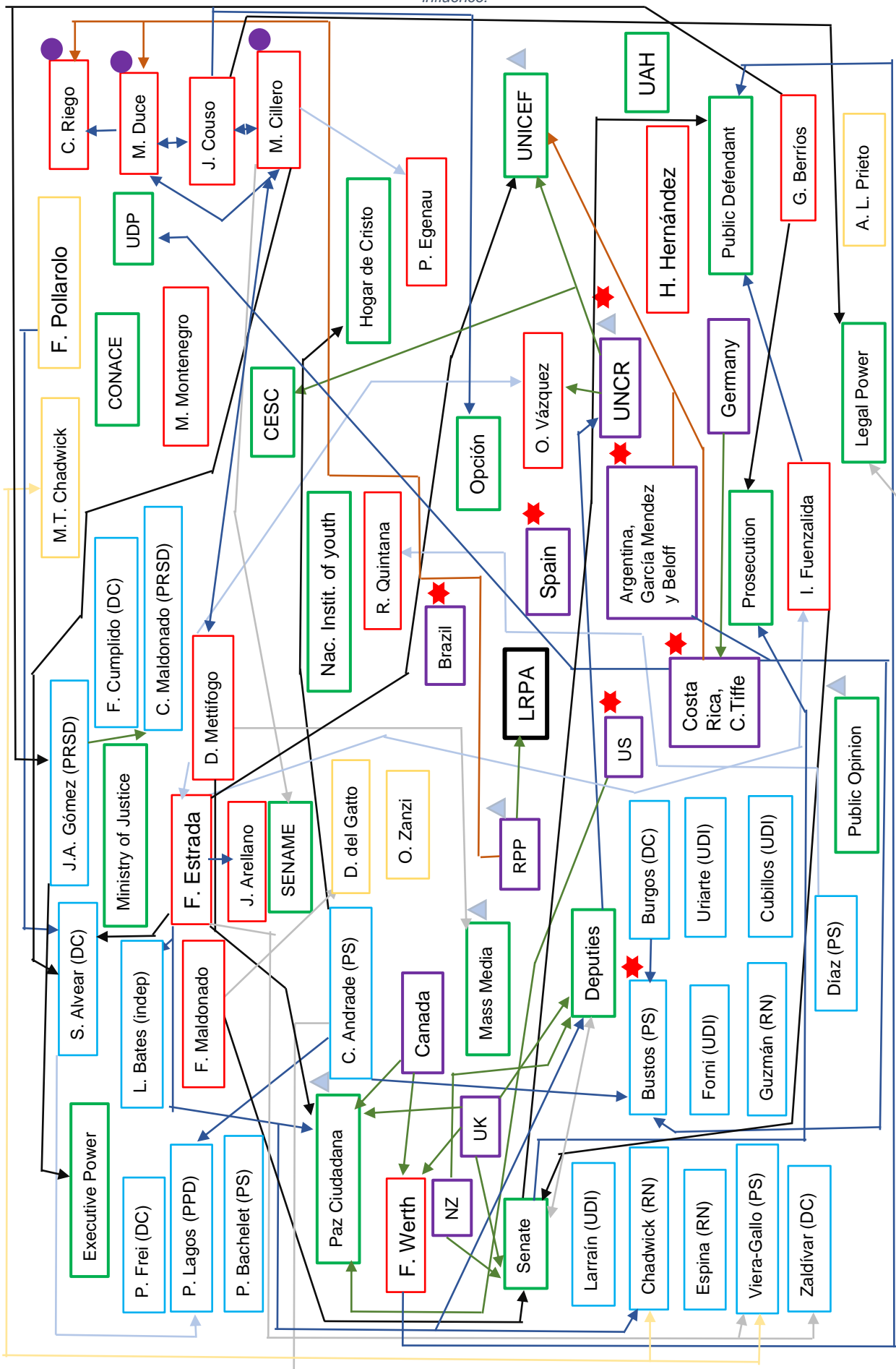




\* Working relationships between actors. Brown: Working relationship; Light brown: Member of the expert committee that assessed the implementation of the law. Green star: Institutions and people who participated in the legislative discussion.



*Interaction between institutions and actors. Lines: Brown: work; Yellow: family; Grey: Dislike/disapproval; Black: ambivalence; Dark blue: Admiration/respect; Light blue: Friendship. Dark green: Influence. Purple circle: wrote the project drafts. Red star: influenced the experts. Light blue triangle: Direct influence on the parliamentary discussion. Purple squares: Source of information and influence.*



As the three networks map evidence, the connections between actors and institutions are complex and hard to follow. The first network map shows the main institutions mentioned so far, plus a few identified as relevant by interviewees. It also provides the names of key actors associated with those institutions. For example, the Presidents are those associated to the reform process. Aylwin is not included because even when there were legal reforms in his term, they had little to do with juvenile justice directly and interviewees did not associate his term to juvenile justice changes. Despite it was under his government that the UNCRC was ratified by the country. At the same time, the Judge of Minors A. L. Prieto appears associated to the Legal Power. Of course, the Legal Power involves a series of institutions and staff. Nevertheless, she was the only Judge of Minors actively mentioned as participating in the reform discussions, representing the old system. She even appears mentioned in the 'Historia de la Ley'. Although after the first stage her role seems to fade.

The first map refers to the working relationships between actors and institutions. In it, it is possible to see that many actors worked in the same institutions and how many of them also changed workplace along the process. However, they kept being closely linked to the reform process. Hence, the small group of actors moved around the same reduced number of institutions, evidencing how tight the key network of actors and institutions was.

The second map shows the working relationships between actors of the reform. This was considered helpful as the network map summarises a 17 years process. Hence, not all were involved at the same time, or interacted directly to each other in relation to the Juvenile Justice System. Therefore, it helps to clarify if they worked together at some stage. The only elements purposefully not added from the information gathered is that the Deputies and Senators worked together and that they were also participating in the legislative debate, as it has been constantly mentioned along the chapters and it avoids the confusion of even more elements in one image. The map also shows the key actors that participated in the Committee to assess the

implementation of the law in 2006 and 2007, and those who participated in the legislative discussion directly.

The third map addresses the type of relationship between actors to each other and towards certain institutions. It evidences from family relationships to those of respect, ambivalence and disapproval. These were determined based on the opinions of the interviewees and what the interaction between parliamentarians in the transcriptions of the debates of the LRPA could inform. It also shows the influence of certain people, organizations and even countries over the process. In fact, a wide amount of the information researched and used to design and discuss the new juvenile justice was based on other international experiences. Though this was through a selective process, as not all countries were considered. Here, it is relevant to point out that the countries referenced vary between interviewees and those more widely mentioned in the legislative debate. So, for example, most experts identify mainly other Latin American countries (Costa Rica and Brazil in particular) and Spain, a point illustrated directly by one interviewee: *'It was understood they took into account the law 5/2000 from Spain, the Brazilian statute, which is older because it is from 1991, and the youth penal law from Costa Rica'* (E., 2017). Germany was also mentioned in more than one occasion. Some others added some general reference to France and Belgium, though their influence did not reach far within the project.

Regarding the influencing models in the Parliament, however, the countries more referenced were Canada, the United States and England. An example of how international experiences were references and used as arguments is provided by Deputy Leal:

*'The international experience is so dramatic that the English Parliament discussed the possibility of lowering the age of penal liability from 12 to 10 years of age. In fact, some members suggested to leave it at eight years of age. That means that the youth criminal phenomenon in England is so big that it has not given any results to set the age of penal responsibility at 12 years of age'* (2004:283).

As the quote evidences, and as stated in the previous subsection, the knowledge of parliamentarians was mostly anecdotal. Deputies and Senators did not mention any source for their information, nor a deep analysis of specific understanding of the underlying conditions of youth offending and juvenile justice in the referenced countries. Therefore, it seems they acted as support for their personal interests and beliefs instead of the other way around. Just as it had happened with the institutions most referenced, invited and more heard in the debates all during the reform process and its legislative stage.

This, of course, raises questions about the countries' selection. Why Costa Rica and Brazil instead of Peru and Argentina? Why Germany while France and Belgium were dismissed? The answer, just as with local actors and institutions, is access and networks. The experts drafting the project had closer connections with those countries. For example, one of the key experts had studied in Spain, while the expert who led the juvenile justice reform in Costa Rica had studied in Germany, and as mentioned at the beginning of this subsection, he was in direct contact with the Chilean experts through UNICEF, and the reform in his country was used as a reference when writing the Chilean project.

On the contrary, the presence of the western English-speaking world is mostly due to Paz Ciudadana that had an approach in that line. Just as previous supporters of the authoritarian regime had followed the United States in relevant political matters before, as the Chicago Boys. For example, according to one interviewee (E., 2017) and as visible in the book of the ten years of the institution (Folch, 2002), Paz Ciudadana had direct connections with some actors of the United States' crime control policies, such as New York's Major, Giuliani. Therefore, the selection of certain countries as models to follow in the reform was not hazardous, but a product of what people in position to take decisions knew and could access, what was familiar for them somehow.

The key element to notice is that most people, institutions and ideas in the reform process were connected in one way or another. The experts knew each other from before the reform started, those who wrote the draft had worked together before or belonged to the same institution. The actors selected to draft the law or participate in the debates formed part of the process because of the connections they had, because they knew someone else who was part of the process. Thus, it is not surprising that all experts interviewed in this research had similar views on the reform, as mentioned in chapter three, as they had worked together in the past, developed their careers in similar times, conditions and institutions, and joined the reform process by this affinity between them. This evidence another aspect of the Chilean culture, also visible since at least the authoritarian regime: the relevance of who you are and who you know to come to take part in powerful decision-making processes, as my own experience as a researcher and to access my sample already had shown me.

Interestingly, the networks in this reform process also divided in the two main opposing groups previously mentioned in chapter three and above in this same chapter. Experts who had been united by UNICEF or had previously worked with vulnerable young people tended to reference and represent the ideas of the UNCRC and focus on children's rights. They were also closer to other Latin-American experiences, together with some influence from Spain and Germany. On the contrary, politicians with no previous knowledge or experience in the topic united around ideas of security supported with reference to western English-speaking countries like the United States or the United Kingdom. They privileged information provided by the media and Paz Ciudadana as more valid or reliable than other sources. This was summarised by one interviewee: *'The interest of the Convention on the Rights of the Child was being covered by the scientific community and by smart operators, and the interest of citizens' security was being covered by the community and by parliamentarians directly'* (H., 2017).

This does not mean that all politicians thought the same way, of course, but their personal knowledge or experience on the issue at discussion played a

central role. For example, Deputy Bustos is identified by all interviewees as another experts, he had publications including a book regarding juvenile justice. He also defended the principles of the UNCRC all over the legislative debate and opposed the shift towards harsher measures. It is worth to notice that he studied in Spain and Germany and lived in those countries after being exiled during the authoritarian regime. Therefore, it is possible to see the same connections over and over again.

The two opposing groups can be summarised by different terms, such as experts and politicians, although that could imply a rigid distinction that we already evidenced was not like that. It could also be referred as those who supported tough measures they associated to greater security and those who privileged the protection of young people's rights and the suggestions of international agreements, according to one interviewee they could be described as '*the populist politics and the one on the side of international human rights*' (A., 2017). But also, they can be identified as the group with knowledge and the group with power to really make the decisions.

#### 4. Voices being Heard

It is possible to conclude then that there was a prioritization of the voices of the political elite and what they believed to be the public demands, over other actors of the system. This was summarised by one of the participants in this research and agreed by many others (such as H., D., C., K., G.), for example: '*The technical reasons were disposed and what predominated was the political decision to, first, fulfil the government's commitment of starting the system, of answering to the social pressure demanding it to be implemented and not to keep postponing, basically that*' (R., 2017).

This leads us to questions of power and who, at the end of the day, is making the political decisions in terms of crime control, and in what are those decisions based. It was already evidenced how interviewees claimed that,



even though they identify some failures in their performance, they had a focus promoting diversion and rights instead of punishment, which was not taken into account by legislators beyond being the base structure for the law. In their discourse it is also possible to see a confrontation of two main elements: knowledge and power. As shown in the previous subsection, there was little information regarding the situation of youth offending in Chile, and Parliamentarians tended to disregard experts' opinions, especially when they did not match their anecdotic and ideologized understandings.

Interviewees also identified the perception of public opinion as another major force directing the law, with the power to influence politics, as one interviewee commented: *'At the time of proposing answers or solutions to these problems those who are more listened to are precisely the community and Parliamentarians. Of those who make, design public policies and approve them, they are the most heard'* (H., 2017). Or at least as a source of pressure to whom politicians felt indebted, as another interviewee highlighted: *'I believe there were citizens' concern regarding youth offending. From the political perspective only, it's reasonable the government had tried to show [the LRPA] as a fighting instrument against youth offending'* (C., 2017). While other interviewee associated the weight of public opinion to the issue of political support, already described in previous chapters: *'I believe that was weighted more was the social pressure to maintain the harshness of the project and the political commitment of those who design the rules at the end, the Parliamentarians, a political authority that answers to the electorate'* (R., 2017). Nevertheless, it is worth remembering that public concerns regarding youth crime and justice had been born and fuelled by politicians and the media, which was highly close to the political elite.

Therefore, it seems that, at the end of the day experts were more worried about children's rights and a new procedure focused on their guarantees and diversion, while Deputies and Senators were more concerned with satisfying public opinion and granting their support. Although this is to be expected, under this populist way of working, the power lay in both perceptions of public opinion and the political elite. In the case of the LRPA in particular, the



Senate was key despite their understanding about youth offending was nurtured by anecdotal knowledge, the media and an institution created by a supporter of the authoritarian right-wing, the resort to populism to obtain electoral support, and the same values and principles that had permeated the Chilean culture all over the authoritarian regime. This included reduced participations of those who did not belong to the political elite. This left out of greater influence the role of experts, and the unknown real wants of the general population.

The terms and characteristics of the reform were ultimately decided by some members of the Executive, Deputies and mostly Senators, who transformed the base provided by the experts (although they could still have some impact later on in the implementation, which goes beyond the scope of this research). This on itself is not necessarily a good or a bad thing, it could be considered as more democratic and promoting a less elitists style of governing. Nevertheless, the key problem is the lack of basis for the decisions finally made, which went directly against the criticism that already existed regarding tougher approaches and also against all knowledge available.

### **III- The new juvenile justice: what resulted from the reform process?**

The reform of the Juvenile Justice System involved a process where the understanding of young people, the institutions, the procedure, the actors of the system, the expectations, and even the opinion of the system itself radically changed. It is worth then to make some comments on the new law in terms of what the changes meant for the document, but also with the hopes and expectations placed on it, beyond what was shown in the first chapter of this thesis.

## 1. Two different ways of being punitive

All during the reform process, interviewees claimed the law went becoming more and more punitive, as the interviewee B. (2017) expressed: *‘The parliamentarians in the context of the discussion of the projects, they were always looking at make stronger punishment measures, to reduce the answer options outside the system while privileging imprisonment’*. The result, in the words of another interviewee, was that: *‘If you compare the original project in 2002 with the one approved in 2005, you see many contents of specialization in 2002 and a text way more neutral in 2005. The Parliament doesn’t take a clear stance regarding definitions, reiterations, joint crimes, more regulation of preventive measures, different standards to procedural way outs, etcetera. That was present in 2002, but in the project the Parliament approved it wasn’t’* (A., 2017).

Hence, there was a progressive change in the drafts in each stage of the legislative process. What interviewees described, also visible in the ‘Historia de la Ley’, is that concerns about providing feelings of security to the public came first and the focus on children’s rights *‘disappeared’* (C., 2017), or at least considerably decreased. Some parliamentarians, such as Senator Ruiz-Esquide for example, kept an attitude and discourse of strong support to the protection of children’s rights and rejection of punitive measures all through the reform. But the voices of resistance to the harsher direction the law was following did not have enough support to predominate (Congreso Nacional de Chile, 2005).

Nevertheless, when providing their personal opinions on the matter, the overall perception is that there was indeed improvement, the LRPA is defined as *‘good’* (L., 2017), *‘adequate to international trends’* (H., 2017), and that it *‘helps to deal with the great majority of the offences’* (R., 2017). Although some interviewees provide a more nuanced perception, claiming *‘it was the best possible project’* (M., 2017).

This raises questions about the recurrent criticism against the direction the LRPA drafts were following and its final result for implementation, for example according to D. (2017): *'At the end the law doesn't accomplish its purpose, with its main emphasis, which I insist is not punitive, its reintegration'*.

This notion of the LRPA not fulfilling experts expectations and regarded now as a punitive system with a series of failures (for example in terms of penalty determination (E., 2017)), can be explained by the changes the project went facing in each legislative stage, which brought the juvenile justice system closer and closer to the adult system, instead of a specialised system that was what the writers of the law project had in mind, according to most interviewees (H., 2017; R., 2017; A., 2017; J., 2017; I., 2017; F., 2017; O., 2017).

For example, based in the 'Historia de la Ley' (2005) and supported by interviewees comments, in the Deputies' Chamber a minimum of one year for all imprisonment sentences became mandatory, element proposed by the right-wing but eventually agreed by the Executive and the rest of the Chamber, as one interviewee described:

*'But [Deputy] Forni turns the argument the other way and said: It [the sentence] won't accomplish it [its goal] if the youngster is going to be only three months inside [prison/youth centre]. That was true, so a minimal stay of a year. That provoked a huge annoyance in the world of NGOs, even UNICEF had a reaction against it. For me, after some time it didn't seem like a bad agreement. That was an agreement the UDI in the Deputies' chamber was willing to take, and that seemed reasonable to me. I will have a maximum, but I also want to have a minimum'* (G., 2017).

Then, in the Senators' Chamber the criteria of the adult penal system were prioritised while specialisation elements were erased, as one interviewee recalled: *'In the senate everything becomes chaotic, the catalogue changes and it's definitely dependant on the adult process, they also add the accessory punishment'* (L., 2017). At the same time, they increased the

number of offences that could have imprisonment as a sentence reducing the diversion options available in previous versions of the draft, situation also commented by another interviewee: *'There was a pretty clear emphasis in the principle of freedom, imprisonment as the last resource. The penal response was basically constituted by measures that didn't restrict freedom, reserving that for the most serious offenses. That was also radically modified in the Senate, establishing imprisonment as an applicable answer under any circumstance'* (R., 2017). The most criticised change was the drastic increase in the maximum reclusion penalties (*'From a maximum of three years of imprisonment, we ended up with 10'* (E., 2017)), which, as mentioned in the previous section, went from three years for juveniles between 14 to 16 years of age and five for adolescents between 17 and 18 years of age to five and ten years respectively (Congreso Nacional de Chile, 2005).

Moreover, after the LRPA was finally approved in 2005, it was reformed again in 2007 with the Law 20,191 commonly referred as *Indicación Larraín* based on the name of the UDI Senator that motioned its legislation. Through that law the conditions of young offenders became even more restrictive while encouraging reclusion. For example, increasing the mandatory minimum time of imprisonment to two years for all over five years sentences, situation also highlighted by one of the participants in this research: *'a new modification of the law 20,084 which was the result of all this discussion. In this modification there were more restrictions, for example, to the possibility of applying substitution of the penalty before a determined time of imprisonment of the young person had passed'* (B., 2017).

Therefore, despite interviewees do recognise the LRPA as an improvement, they mention in several occasions their disappointment. This ambiguity can be understood by two main elements. Firstly, in comparison to the Tutelary System, as many interviewees expressed, for example:

*'I left with the sensation we had progressed a lot, you know? I mean not only separating children, and the specialization in the intervention, and to install the rights' approach. I think it was a great step' (P., 2017)*

*'It was a huge progress, right? A radical change, right? The subject [young person] is seen as someone we need to worry about' (Q., 2017)*

Secondly, from the perception much more could have been done, the feeling of missing an opportunity to have a project in line to their expectations, in the words of one interviewee: *'For me it's way better of what we had, the problem is that we missed a great opportunity, I believe, to do something better' (C., 2017)*. Situation they saw possible at the beginning with the first drafts, which they claim could have become *'the best law in Latin-America'* (G., 2017). But instead, it became a punitive system closer to the adult penal regulation, unable to reach its goals properly and distant from the suggestions of International guidelines.

## 2. Expectations versus possibilities

The new juvenile justice system was expected to at least partially address the elements that had led to the need of and demands for a reform. The future success of politicians was tied to the capacity to implement what they had consistently claimed to be the answer to the concerns of the population, or the criticism to the opposite political coalition would worth nothing. Hence, the new juvenile justice was the opportunity to reaffirm democratic commitments, as Deputy Araya stated: *'The Government, through the Minister of Justice and SENAME, has made a huge effort to reform and obsolete system which, no doubt, will help us to progress in a more stable rule of law, a more democratic State which provides more spaces to all sectors'* (Deputy Araya, 2004:277).

It was also used to rhetorically present themselves as in line with children's rights, despite how much of the UNCRC suggestions had been dismissed.

For example, by adding consideration to due process: *'This initiative has more guarantees regarding the young offender, who will have both a lawyer who defends him and a due process'* (Senator Viera-Gallo, 2004:502).

At the same time, it could give physical presence to the efforts to impair the new controls over citizenship, to promote the education of 'good productive citizens' and reinforce the new order. The new law acted as a clarification and public statement of the new social rules and expectations of what citizens needed to follow, as Deputy Burgos emphasized: *'In this initiative there is a future public policy; in the sense that, as a society, we are going to clearly express we do not play dumb with what happens with young offenders'* (2005:1034). This of course implied making sure the interests in prevention and rehabilitation were being covered. Intentions summarised by Deputy Meza in the legislative debate: *'With the approval of this project we will reduce the serious offending in which young people participate. But more important than that, we will be helping to generate conscience, to discover new men, in summary, to rescue for our Chile men and women who contribute from their potential to the development and growth of each one of their children'* (Deputy Meza, 2004:262).

Likewise, it could keep the promise to bring juvenile justice to modern times, as Deputy Luksic emphasised: *'This project is progress, because it locates us a little bit in the same conditions of what is happening globally in this matter'* (Deputy Luksic, 2004:258). Together with granting the values expected of public service providers in modern times, such as efficacy as Deputy Uriarte noted: *'The text known and generally approved by the Constitution Commission and by the Chamber was agreed with the purpose of reaching improved levels of efficacy in the fight against crime'* (2004:356-357). Or security, as highlighted by Deputy Burgos: *'This project is a great step in the fight to have more citizens' security. It is in this kind of discussions where the future of the citizens' security of the country is determined'* (2005:1096).

All while fixing the identified failures of the Tutelary System, for example in terms of mixing children in need of protection and those who displayed offending behaviour, as Deputy Uriarte noted: *'The second reason to approve this project is that it separates definitively the process of protection of minors at social risk and the imprisonment and rehabilitation system for minor offenders'* (2005:1098). Stopping impunity: *'It is precise that there is clarity regarding the ending of impunity'* (Senator Coloma, 2005:972). Or making young people responsible for their actions: *'We are about to make the young person responsible for their offences and, at the same time, to establish a mechanism that differentiates the responsibility of the adolescent from that of an adult; which allows to work on their social insertion and in the early stoppage of crime careers'* (Surrogate Minister of Justice Arellano, 2005:1041-1042). At the same time, as Arellano's words demonstrate, the LRPA could send the sign young people and adults were treated differently, despite how much that difference had decreased as the law draft progressed.

Therefore, the resulting new juvenile justice system allowed the political elite to address a series of debts with the new order, the situation of young people in problem and in terms of the national and international image of the country, while being seen as listening to the demands of the general population on the topic.

Once the law was approved, but before it was implemented, various experts joined in a Commission that had to analyse the applicability of the new juvenile justice system. They produced two reports, one in 2006 and one in 2007, the same year the law was reformed through the already mentioned Law 20,191 and had to start working in the whole country. The conclusion in both reports was the same: the institutions and actors of the system were not ready for implementation. In the words of one interviewee who participated in those Commissions: *'In the reports we presented to the government and to the Senate we said the conditions weren't ready to implement the law in 2007'* (J., 2017). This situation was also widely recognised and amply criticized by most interviewees, for example: *'The infrastructure wasn't there,*



*the programmatic offer didn't exist, the demand exceeded the capacity to perform'* (R., 2017).

During the interviews, the participants in this research emphasised in different occasions their disappointment regarding the implementation of the law, and how it could not fulfil its goals under the given circumstances, or how it was impossible to have good results despite the written law itself: *'The project had strengths and weaknesses, but it was a project you could work with, so the main moment was implementation, and the implementation is disastrous'* (F., 2017). In this quote is also possible to see the ambiguity towards the law mentioned in the previous subsection. The negative perception experts and actors of the system had on the initial implementation also altered their opinion on the document that was approved, nuancing their criticism, which sometimes appear stronger and sometimes directed towards something else (such as the implementation in this case).

Under any circumstance, it seems the new Juvenile Justice System carried the weight of numerous expectations and purpose. It had to deal with the concerns about security and impunity risen all over the 1990s; the social values of responsibility, modernity and efficiency; the international commitments that had a direct impact on Chile's image to the world; and the populist campaign promises that had been developed over the years. It also had to help one side or another of the political projects in conflict, be the basis to legitimate the new order by setting the new rules under a democratic environment, and of course be successful in prevention, crime control and rehabilitation.

However, the conditions were not ready for such variety of goals in one single document. There was no childhood policy or social welfare infrastructure to support some of the expectations set on the LRPA.

Moreover, after the institutional crises Chile had lived and the resources of a weakened State building all that was needed and training all the professional from whom such a variety of outcomes was expected was almost impossible to fulfil. The result was a messy document that tries to deal with everything



but in fact does not clearly state what to do under a series of circumstances, for example in terms of the specialised treatment of juveniles, as one interviewee summarises: *'The regulation that allowed the Prosecution, the Defence and the Legal Power to decide how to fulfil the principle of specialization without any other legal requirement than training, I think that was a mistake'* (M., 2017). The result, just as the process that led to its development, was a political instrument instead of a conscious Juvenile justice regulation and system that had the security of the population, the prevention of youth offending, their rehabilitation or most of the discursive practices sold to the general population or the wellbeing of young people at heart. This is also visible in the critiques and comments contained in the 2015 Report of the Committee on the Rights of the Child, where they recommended to address all recommendations that had been unconsidered in their 2007 report, highlighting other failures of the LRPA associated to the lack of budget, standards, protocols and procedures, together with concerns regarding its repressive attitude while not fully incorporating the Rights of the Child or respecting the best interest of children in all areas (Committee on the Rights of the Child, 2015). In consequence, it was more of a symbol of the new political order and the embrace to modern times than a juvenile justice system.

#### **IV- The juvenile justice reform**

The LRPA is the result of a convoluted process of the political struggles between two main forces, one trying to legitimate the new democratic order and the other trying to prolong and legitimise the practices of the authoritarian regime. These struggles took place in a specific context dominated by the rules and people set by the dictatorship, including the changes they implemented in the country, such as neoliberalism, but the conflict was also fed by the effects of democratization, such as the sudden clash with modernity and the outside world. The resulting reform was also the

result of a series of influences, which involve regional experience mixed with the recommendation of international agreements by a group of experts who shared a similar view. It was then modified by politicians who answered to internal and social pressure to remain in power and satisfy the electorate that granted them their privileged position. This situation derived in populist and punitive strategies.

Such strategies had a strong reliance on similar international approaches, particularly in the United States, a country especially close to the neoliberal right-wing. As history has evidenced, they shared networks and affinity given the political economic approach of both nations and the privilege for authoritarian measures. According to Miller (2016) the lack of accountability together with reduced citizen's engagement and effective participation in politics leads to punitive and repressive practices as imprisonment. The author refers to the United States and its democratic order, but that part of the argument could also be applied to Chile. Moreover, Miller states that accountability implies citizens must know who to hold accountable, situation that does not happen in Chile either, as everyone denies their responsibility and tend to blame others as shown in the statements provided by some members of the Parliament, and as there are no channels for political participation in the general population (Clauren, 2007). The practice to resort to punitive measures has also been described as common when States redefine themselves in the penal realm, distancing from other social aspects (Wacquant, 1999). For example, with reducing welfare in neoliberal States, strengthening instead their identity as crime control and security reinforcers, such as in Chile.

It is interesting to notice that policies such as 'zero tolerance' did not become a reality at the time. However, they helped to shift the discourse in a more punitive direction, decreasing the impact of the UNCRC suggestions and granting the increase of the length of imprisonment and the reduce of diversion measures.

It seems to be that in Chile, what drove the juvenile justice reform, the process of change and the result was more than anything else the product of politics and political forces, the result of the consequences of the authoritarian regime and the needs in the transition to legitimate the new democracy and ruling elite. The needs the LRPA was supposed to satisfy could have been addressed, at least partially, by other means. For example, through a childhood protection policy. Moreover, even the cultural principles to which the Juvenile justice System needed to be adapted could have been addressed differently. Efficiency, for example, could have been ensured by establishing appropriate connection between State institutions and coordinating the work of the Ministry of Health and Education with the Juvenile Justice System, which did not happen. Following the same line, evidence was disregarded, the experience of the actors of the system unconsidered, young people themselves were not really questioned about it. Juvenile justice in Chile was not about granting rights to young people in trouble or improving their situation, ensuring their rehabilitation. For the political elite that generated the need, directed the discussion, modified the project, and determined its final characteristics, it was a statement of power and legitimation, it was also a strategy of diversion of the attention and manipulation.

## **Chapter 7: Discussion and conclusion**

This research set out to explore the radical transformation of the Chilean juvenile justice system that took place in the mid-2000s, where the system changed from a tutelary approach to one focusing on penal responsibility. The purpose was to explain this specific process of change, the reasons behind the decision to reform and the reform drivers shaping the result; to analyse to what extent research and theory of penal transformations can help to explain this case; and to contribute to the theoretical discussion of the field with empirical research.

In order to study this particular case, I used semi-structured interviews with key actors in the juvenile justice reform process, and the analysis of documents such as the 'Historias de la ley', presidential speeches and government plans of candidates to presidency which contained the political statements of the time regarding the legislative discussion and the national mood around youth offending and justice. However, in order to understand all drivers in the reform process, I also studied the national social, political and economic context through history in the periods of the authoritarian regime (1973-1989) and during the first democratic years until the implementation of the new juvenile justice (1990-2007).

This thesis shows that the Chilean juvenile justice reform is the result of a series of contextual historical, political and socio-cultural elements. It answers to the intertwined effects of an authoritarian past that transitioned and expanded to the 1990s' democratic order, the sudden encounter with a modern globalized outside world, and an uncertain future. All elements that shaped the social organization, the political culture and citizens' needs and expectations.

The previous chapters have presented what the literature says about penal transformations; the methodology used in this study; the Chilean context, the reasons behind the decision to reform the juvenile justice system and how

that reform took place. This chapter will focus on what the Chilean case adds to the discussion on penal transformations.

## **I- The Chilean case**

The reform of the Chilean juvenile justice system, even though it was implemented in 2007, was the result of a process that started with the transition from authoritarianism to democracy in 1990. As mentioned in chapters one and five, the UN Convention on the Rights of the Child [UNCRC] is considered the starting point of reform by both experts and politicians. However, the analysis presented in previous chapters suggest that the real starting point was the need to legitimize the new democratic order. The ratification of the international agreement and the efforts to take it into public discussion and official discourses does not relate to the wellbeing of juveniles, but to the strengthening of the democratic project. In consequence, the influence of the UNCRC was more as a means to change the international image of a country with a recent history of widespread State violations against Human Rights than a basis of what the new juvenile justice had to look like.

This is visible in the lack of real practical commitment with the suggestions of the UNCRC and other international agreements on the matter. For example, a childhood policy was never developed in the country. Moreover, even the articles 37 and 40 of the UNCRC, that were permanently referenced all over the legislative discussion (Congreso Nacional de Chile, 2005), were eventually displaced to privilege more punitive practices than the ones initially intended in the first drafts or the project approved in the Deputies' Chamber in 2004 (more strongly reliant in the 1998 draft of the project, which was written by juvenile justice experts in coordination with UNICEF).

The strength of this need to legitimize the new democratic order can be understood if we take into consideration that over 40% of the population still

supported the authoritarian regime. Moreover, a series of social, political and economic changes imposed by the military government continued untouched into democracy, and an important part of the authoritarian elite remained as part of the new 'democratic' political elite. The authoritarian enclaves, the widespread neoliberalism, the lack of prosecution for Human Rights violations, and the levels of poverty and inequality in the country marked the present Chilean democratic order. Thus, without addressing any of these elements, the new authorities had to find a way to gather and maintain their support.

There was no evidence of an increased problem of youth crime, no evidence that there was sense of a problem in youth crime among the public at the end of the dictatorship or at the beginning of democracy. Instead, it was created by the elites and transmitted through new elite owned media, what Sozzo (2016) denominates 'from above' when talking about the expansion of crime concerns in Argentina after their own dictatorship. In consequence, it could serve as a strategy to divert attention to problems of crime and therefore away from other problems (such as inequality) while gaining citizens' support and keeping the focus on democratic concerns (such as the rights to security and due process). For example, the 'general perception' of increased and more violent youth offending over the 1990s and early 2000s is based in notions such as crime rates in a country that had not reliable measure systems before the 1990s, and any contrasting with the information provided by a dictatorship that kept most of their dealings in secrecy does not offer a fair starting point. Moreover, there was no real knowledge of what regular citizens actually thought about crime or the quality of their experiences.

Nevertheless, the strategy worked, and crime became one of the top three concerns in national polls (Dammert and Lunecke, 2002; Dammert, 2005). As chapter five evidenced, this was the result of a series of anxieties and insecurities Chileans were facing with the transition. This also talks about how people respond to fear and uncertainty, which has been evidenced in other societies as well (see for example Pearson, 1983 or Garland, 1985). Young people tend to become the centre of attention and control when other

areas of life cannot be controlled or regulated. This probably relates to the role attributed to young people as the future of society, and how their behaviour has been historically thought to reflect the local moral values. In consequence, youth offending is more than just about youth offending. Instead, it is a more pervasive civic institution about building society, which is what places it as a central object for polity building. The role of juvenile justice institutions becomes even more central in societies in transition, as they are facing more intensive periods of re-design, while developing the direction they want to follow. In turn, that requires the legitimacy that grant the authorities the support for the new social project. Thus, juvenile justice has a symbolic social and political power.

In this context, the paradox of a juvenile justice that only re-shaped the punitiveness of the tutelary approach into the setting of a modern, rights and responsibility-based system, it is not surprising. The chance of a juvenile justice based in the respect of international guidelines about children's rights as contained in the first drafts drifted, while in a national context of new democracy and widespread Human Rights rhetoric, to one that privileged punitive measures. While having other options, overcontrolling and paternalistic logics of the past that promoted long-term imprisonment of juveniles under the custody of the State remained, only this time under a more acceptable apparatus of institutions and procedures that respected the rule of law as symbol of democracy. This is the result of the predomination of authoritarian views, rules and practices which mediated and shaped democracy, in a setting where children's rights were not a real interest but the need to legitimise the new political order, the international image of Chile and to build a new social project dominated the political agenda. Only under these particular circumstances the privilege of elite networks over more informed and less-punitive knowledge can be really understood and make sense.

## **II- Chilean exceptionalism: the interaction between the broader literature and the Chilean case**

Based on the reform process of the Chilean juvenile justice system, it is possible to look at the literature of penal transformations from a new perspective. Chile offers a series of conditions that differ from what the literature describes about penal transformations that have followed and privileged a more punitive direction. For example, Chile did not have an influencing case such as the murder of two-years-old James Bulger by two ten-year-olds that fuelled the discussion about youth offending, as it happened in England (Green, 2008). Chile was also experiencing outstanding economic growth and decreasing poverty, which makes a difference to the reality of crisis presented in other transitional Latin American countries (Chevigny, 2003; Pinheiro, 2007; Sozzo, 2016), as shown in chapter two. Moreover, the general context was of political stability, another difference to other Latin American examples (Cleuren, 2007; Becket and Godoy, 2008), and there were no meaningful concerns about immigration as in transitional Greece (Cheliotis and Xenakis, 2016), or terrorism as in post dictatorship Spain (Medina-Ariza, 2006).

However, there were other elements in Chile the literature associates with punitive developments, such as a neoliberal political economy, the influence of international punitive policies such as 'zero tolerance', and political conflict between parties that derived into populist ways of dealing with crime. But do they explain the reform of the Chilean juvenile justice system and the punitive direction this reform followed? The answer is that they were influencing factors, but instead of helping to explain the reform, they are actually one more of the visible symptoms of the conditions of the transition from authoritarianism to democracy already described. This is key, because comparative theoretical research tends to focus on more visible factors, without necessarily understanding the dynamics of how they work or what they mean in a given local context. This implies that relying on such general overviews can lead to misjudgement of the influence of these elements.



For example, Chile, as most Latin American and European countries, was receptive to 'zero tolerance' policing. The country added it to public political speeches, and right-wing candidates to presidency (Lavín and Piñera) considered it as part of their government plans. It could then be said that Chile followed the same trend that other countries in the matter (such as Wacquant (1999) describes for France and Germany). But those candidates were not elected, and the policies were not implemented. It could then be said that Chile rejected those policies and took a different path, which is not a faithful description either. The policies were not implemented because the Concertación still had, even though not for much, the majoritarian support of the population after years of economic success and political stability. However, 'zero tolerance' rhetoric did impact in public debates about crime. Slogans such as 'revolving door' and 'iron fist' dominated the dialogue and Concertación presidents in two terms build more prisons than the whole authoritarian regime. Thus 'zero tolerance' policies were not implemented from the book, but they did influence the direction crime control and punishment followed.

Something similar happens with neoliberalism, which chapter two showed it is usually associated with more punitive approaches in crime control and State punishment. In Chile neoliberalism is one more of the many hangovers of the authoritarian regime. There is a connection between the social values promoted by this model of political economy and the military government, such as the prioritization of individualism, responsabilization, and private property. Therefore, their expansion does not answer to neoliberalism alone. Moreover, neoliberalism was implemented in the dictatorship through force. Instead of following a negotiated process mediated between citizens and the government, it was simply imposed. In consequence, there were no strategies to minimize the effects on regular citizens, such as State aids for example.

On the contrary, water, health and retirement pension became private for most (except for members of the Armed Forces), who had to adapt to the new circumstances without a right to protest. Similarly, the changes in the

relationship between citizens and the State, their distance and passivity in political life, cannot be simply attributed to neoliberalism and the reduction of the State through privatization. This change was also the result of the permanent repression of the Armed Forces and the elimination of channels of communication between citizens and the government through the blocking of the media, the control in public spaces, the centralization of authority in the figure of the dictator, the reduction of local powers, and in short the prohibition to speak about certain topics. This notion dictatorship was the real force behind all the changes described in this paragraph is strengthened when we consider that once in democratic times, neoliberalism did not lead to further reduction of State support, at the time of the discussion of the new juvenile justice system, Chile had in fact more State aids, growth and employment than during the authoritarian regime.

This is not to deny the strong presence of neoliberalism in Chile, or to question the prioritization of private business' interests instead of workers or the existence of marginalization in the country. However, this thesis shows that in Chile what seemed to have more weight, again, was the transition process and the continuation of authoritarianism. Neoliberalism being one more of the authoritarian enclaves instead of the cause of the national social, economic and political landscape.

Moreover, as already mentioned in chapter five, the anxieties and uncertainties attributed to late modernity, as described in chapter two, do not quite fit in the Chilean example. A general overview of the country could evidence the notion of widespread feelings of fear and insecurity, or the predominant role of crime attributed to late modern societies. However, when taking into account the transitional context of the country, the heightened levels of poverty and inequality, the past failure of democracy, and the actions of the authoritarian regime, it is not surprising Chilean citizens would be anxious about the new government, the new political rule and social conditions. In this context, to attribute all of this to late modernity seems a reductionism of the local history. Though as Becket and Godoy (2008) highlighted, Garland (2001) did not develop the concept thinking about Latin

American transitional societies and he has not used it with this purpose either.

Therefore, a methodology that allows an in-depth analysis of these processes of reform is the best way to approach and understand the underlying dynamics between elements as complex and so hard to define as modernity or globalization, which together with culture and social organization are usually taken for granted. Thus, most research does not explain how they work in the jurisdiction under study. For example, Chile did not have the chance to go progressively adapting and evolving to the modern globalized world. The country went from under tightly controlled interactions with the outside world for almost 20 years to being suddenly hit by it, which only fuelled the fears and anxieties already described for the local social and political context. Brandariz-García (2018), described this for Spain as the 'dromological' experience of change. This refers to experimenting the transformations the world had progressively developed but in a compressed way. Spain was also isolated and controlled by its own dictatorship, and when it ended, they had to suddenly and quickly adapt to all the changes the democratic countries in the European region had gone through. Chile would have also experienced this 'dromological' change, making the jump from the Chile of the late 1960s to the modernity, globalization and strong rules of international markets in the 1990s.

The influence of convergent trends such as international Human Rights discourses was also shaped by the divergent local characteristics of Chile. For example, the UNCRC was read through the lens of the new neoliberal and authoritarian values. Moreover, the justice principles being promoted by the international document were mediated by the previous justice institutions. For example, the structure of the institutions and procedure of the new Chilean juvenile justice system rely on those designed for the adult procedure. Similarly, the new responsibility approach inevitably mixed with some notions that came from the tutelary approach. At the same time, the Constitution that defined the rules to make new legislation had been the result of the military government.

Therefore, in Chile, it is only when taking into consideration the transition from dictatorship to democracy, from an isolated and closed society to an open liberal organization that the influence of convergent trends can be understood, especially when comparing their effects in long standing democracies or other transitional societies. This implies the understanding of the present reality. That is the influence of previous political, crime control and justice institutions, the culture, the political economy, and their interacting dynamics, which have been thoroughly discussed in the previous chapters. The study of past struggles, knowledge, ideas predominating public and expert discourses, and even the distribution of power to make the decisions are key aspects to be analysed. In consequence, the literature cannot simply be applied to a new context.

### **III- Contributions of this research to the field of penal transformations**

This research provides a new case study that has not featured in the broader literature of penal transformations, helping to understand the reform process of the juvenile justice system that took place in Chile in the second half of the 1990s and great part of the 2000s, and how juvenile justice becomes the object of efforts to build legitimacy in transitional contexts. In doing so, it contributed to the recently growing literature regarding State punishment in the global south and in Latin America, but also regarding societies with recent transitions from authoritarianism to democracy. This is relevant as most of what is known has been developed in and for western developed democratic countries in the global north, and thus it falls short to provide suitable explanations outside those contexts. This because elements that are often taken for granted, such as modernity, are not well understood in new local settings, as they interact and are shaped by the local reality. Similarly, local cultures are usually not well known as they answer to local processes of development.

Moreover, the Chilean case provides new elements to take into consideration. As I have shown in chapter five, juvenile justice can be used not only to distract the population, but also to validate new social values, a new democracy, a legitimate State, and to promote trust under a rhetoric of rights protection. It can also be used to project a national image abroad. Concerns about juvenile justice can be built over the fear and anxieties that in times of change can be easily turned towards those who represent the future and are more easily controlled. This can all be generated just using words, beyond the need for local evidence and research. In fact, this gap of knowledge can be exploited to create problems of crime that do not necessarily exist, or to claim popular support without really knowing people's actual experiences, feelings and thoughts on the matter. This thesis also evidenced how using rhetoric and reading the world from biased eyes, not really understanding what the UNCRC actually implied, can lead to using the same rights discourse and turn it into something that promotes more punitive practices. That is, the contrary of what they intend.

Chapter six showed the relevance of the dynamics of polity building. For example, the key role of networks, and how they can be used to validate authoritarian practices and ideologies in democratic times, or how being in a position of authority provides more access to participate in certain projects (over other suitable options) and more credibility in the eyes of the general population, compared with actual knowledge in the matter (even the one supported by international institutions such as UNICEF). What is more, interestingly enough Chile had to adapt to the newly arrived modernity and globalization, however, the mode of adaptation strengthened rather than transformed the existing policy networks and connections. In consequence, it highlights issues of power distribution, how networks determine what voices are being heard, and how all of that weights more than the failures of the previous system. The role of the media can also be understood from a different perspective, evidencing how its influence under the hands of the same people, and to support the same status quo, modify in terms of authoritarian and democratic times. For example, during the dictatorship it

promoted the support for the military government and apoliticism, while in democracy it politicised the issue of crime to spread similar ideas of control, diverting attention from more pressing matters, and thus serve the same interests of the authoritarian elite, only in more open ways adapted to the new times.

This research also adds empirical evidence to the relevance of local diverging factors in mediating the impact and even understanding of convergent influences. This suggests the limitation of the extent to which theory can be generalised, and suggests that more knowledge about a particular jurisdiction is needed for meaningful comparative research.

In the same line, this research suggests a different methodological approach of the study of the evolution of crime control and State punishment and how they become a key topic for polity building. Most studies are theoretical and sometimes comparative. However, this does not allow a thorough understanding of the underlying dynamics of influence between the different elements shaping the debates and actual developments. In consequence, I suggest in-depth empirical research can be more productive. I used semi-structured interviews and documents, but there are other options such as ethnographies, focus groups, or media research may also be illuminating. It is only by accessing the processes of reform, instead of only the results, that the struggles, power divisions, models, abandoned ideas, and underlying reasons for each of the small changes in each step can be clearly grasped, making evident why the final product has that particular shape. This could allow a better understanding of reform processes, and avoid confusion, oversimplification or reductionism regarding the role and interaction between the local characteristics and global pressures, between factors that promote convergence or divergence amongst jurisdictions.

As shown in chapter two, the object of study proposed in this research was also different to most research in this field, which is based in imprisonment and/or crime rates. However, by looking at juvenile justice instead, it is possible to grasp a better sense of the general processes of transformation

and reform a society is going through, including notions of the future, the socio-political project, how crime is often symbolic of broader social anxieties, and that a big juvenile justice reform can act as a scapegoat in times of transition. Therefore, the focus on juvenile justice provides a broader perspective of the causes behind the decision to reform and the direction State punishment is following, and it is highly revealing of broader cultural drivers and socio-political projects.

Nevertheless, more research about penal transformations in societies that have experimented recent transitions from authoritarianism to democracy is needed. Studies about countries such as Argentina, Brazil, Guatemala, but also Greece and Spain claim to have turned more punitive and populist regarding crime control and punishment as well. All of them being recent democracies. However, they differ in the reasons they attribute to these developments. Albeit most of these studies are also based on imprisonment and crime rates, they seem to imply different paths, processes and what this punitivism means or how it expresses. This, because as shown in chapter two, Spain, for example, followed a different approach for years, distancing from Franco's regime, this changed only in the early 2000s due to the presence of terrorism (Medina-Ariza, 2006), while in Argentina, Sozzo (2016) has described certain closeness between the government and the authors of 'zero tolerance', but these policies followed a more ambivalent path, becoming central mostly in periods of political and economic crisis.

This could mean there is an issue regarding how punitiveness is defined, which could be addressed by the methods suggested when studying the processes of reform. But this also rises questions regarding how these different societies have reached an apparently similar result. Does it mean populism and punitivism are simply the result of generalized convergent trends? Or that all countries that share a same model of political economy end up in the same situation despite other divergent local elements and pressures for convergence? However, there are exceptions to this (see for example Cavadino and Dignan, 2006; Pratt, 2008a; 2008b). Greece and Spain are European countries, while Argentina, Guatemala, Brazil and Chile

are Latin American. Economic crisis has been described for all the countries but Chile. At the same time, the neoliberalism of Spain, Argentina and Chile, for example, is different and the interaction between citizens of each countries and their States are different as well.

The common element is that they are recent democracies after harsh authoritarian governments. However, at least in Chile, most crime control and State punishment accounts and research do not refer to the dictatorship, they do not state the lack of information regarding that period, or the previous violence faced by the Chilean society. As shown in chapter five, they built on perceptions of increased levels of crime in the early 1990s, which went only increasing without questioning of how little was known from before that, or how safe Chile was, comparatively. Therefore, perhaps is a common practice in democracies with a strong influence from the authoritarian rules, elite, and ideology to avoid making reference to that historical time. However, this make all analysis incomplete, presenting the characteristics of a society in a vacuum instead of the result of specific dynamics that can make possible to understand why they act in the way they do. Moreover, by denying or omitting the past, they may attribute causal effects to elements that are just one more symptom that feeds into the whole dynamic, but is not what shaped it, as it happens with neoliberalism in Chile, despite all it has been written about the influence of political economy in punitive developments.

Furthermore, to understand that past that shaped the societies that focus on crime control and punishment as polity projects to build the future, can help to understand the different developments. For example, Argentina has followed a much more ambivalent interaction with punitive practices, which seem to be more in line with what the literature has described regarding moments of crisis (Sozzo, 2016). In contrast to Chile, they condemned the actions of their authoritarian regime, prosecuted key members of the Armed Forces, and gave national recognition to the victims of Human Rights violations. However, in Chile, where the logics and people of the dictatorship continued into democratic times with few alterations, there was no national validation of the victims, and Pinochet remained untouched until his death,



the country followed a somewhat different trajectory. In Chile there was a permanent increase of populism regarding crime, which led to the continuation of punitive and authoritarian practices despite the new 'rights' discourse, because security from crime also became a right, and children rights were equalled to responsibilities.

Therefore, punitive and populist developments in societies that have experienced recent transitions from authoritarianism to democracy seems to be the result of the strength and influence of the authoritarian past, and about validating the new political order under such conditions. All other factors would be shaped by the values and principles that go with the repression, the control, the imposition of an authoritarian State, and cultures that adapt and naturalize some aspects of that context, or that simply take distance and feel too disappointed and powerless to actively participate in shaping the country they want to live in. It would be extremely interesting then to study these penal transformations from the perspective of regular citizens.

Other elements that are worth taking into consideration and that could not be part of this study, would be to access the experiences of the children and young people that go through the system, especially those who experienced both the tutelary and the responsibility approaches. The opinion of the actors of the system that interact directly with young people about the reform project and the final result could provide very interesting feedback regarding the expectations versus the reality of the reform process as well. To look at the implementation is another aspect that requires attention, not only because most of the participants in this research blame the implementation for the failures of the LRPA, but because there are important changes between what the document of a law says, and what can be done in the spot with the resources available. Implementation is a dynamic process that tells about how the written dispositions are interpreted once in the field, and what practices develop and become part of the justice system just by the force of habit, experience or training, elements that policy makers are not necessarily aware they happen. Finally, more evidence regarding the process of reform of other realities could allow to perfect the method to study penal

transformations and would provide material to conduct thoughtful evidence-based comparisons to test what is known and to identify the influence and effect of different factors in different realities.

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## **Annex 1: Ethic forms University of Edinburgh**

### **Research Ethics and Integrity**

### **Application form**

School of Law

University of Edinburgh

This form should be completed:

1. For **ALL** projects where funding is sought

And/or

2. For **ALL** projects which involve empirical investigation (including secondary data analysis and research with human participants (such as interviews, ethnography, etc.))

Workshops and seminars do NOT normally require ethical approval unless:

1. They are held in places which might present risk to safety and security of the researchers, delegates or hosts (such as conflict areas, prisons, or schools)
2. They involve vulnerable participants (such as children, prisoners, or patients)
3. They involve the dissemination of potentially sensitive data.

In these cases, this form should be completed.

### **Instructions**

1. **ALL** applicants should complete this form. If supplementary forms are required (as below) please complete them and submit them with this application.
2. Please read the guidance before completing this form, available at [link]



3. Please ensure that all sections are completed.
4. Save your form as a Word document with the title containing the following information: **surname\_ usertype.doc(x)**. (Uertype choices include: staff, PhD, LLM/MSc, UG).
5. Forms should be emailed to the RKO at [law.ethicsreview@ed.ac.uk](mailto:law.ethicsreview@ed.ac.uk)
6. The form title information (surname\_ usertype) should appear in the "Subject Box" of the submission email to the RKO. **This form should be emailed from your ed.ac.uk account – forms will not be accepted by any personal email address.**
7. Please submit your forms at an early stage of the proposal/project development to allow sufficient time to review and query.

**\*\*Ethics reviewers will aim to respond to your application within one working week.\*\***



## Research Ethics and Integrity: Approval form

TO BE COMPLETED BY ALL RESEARCHERS

1 DETAILS OF RESEARCH AND INVESTIGATOR/S	
Name and position	Daniela Rodríguez Gutiérrez, second year Criminology PhD student
Title of research	Penal transformations: The case of the Chilean juvenile justice system.
Proposed start date	The project has been in constant development and improvement since the start of the PhD in September 2015. Fieldwork is planned to start in January 2017.
Duration of the project	The complete research project last three years, including the design and approval of the project, fieldwork, analysis and dissertation writing. In this context, fieldwork is planned to last until June 2017.
Co-investigator/s (if any)	-
Project Summary (including details of methodology, not more than 150 words)	<p>The present project intends to address processes of penal transformation in both theoretical and empirical perspective. In order to do so the project will be focused on the specific case study of the drastic reform of juvenile justice in Chile that took place in the years 2005-2007. The broader aim of this study is to assess and extend current theories of penal transformation by examining how systems change in an unexplored (Southern) context.</p> <p>In order to do this I will conduct interviews with key actors in the reform process. It will also involve a documentary analysis of national reports, surveys, and official information regarding the economic, political, social and criminal situation of the country related to the reform of the juvenile justice system. This implies access to archives in Chile.</p>
<b>If you are a student, please provide the following additional information:</b>	
Email address	<a href="mailto:S1428148@sms.ed.ac.uk">S1428148@sms.ed.ac.uk</a>
Degree programme and year	PhD in Criminology, second year.
Course to which this research relates	PhD dissertation.

Name of supervisor	Dr. Anna Souhami and Prof. Lesley McAra	
<b>2 FUNDING</b>		
Is funding being sought for this project?	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
If YES please give details.		
Does the project require approval of any other institution or ethics committee?	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
If YES please give details.		
<b>3 LEVEL OF APPROVAL SOUGHT</b>		
Does your project involve ANY research with human participants (e.g. interviews, observations, etc.?)	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
Does your project involve secondary data analysis which may have ethical implications in the use or presentation of data?	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
To the best of your knowledge, could any institutional or personal conflicts of interest arise from this research?	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
<b>If you have answered YES to any of these questions please complete supplementary form A (Level Two Approval) and submit with this form.</b>		
Does your research concern individuals or groups which may be construed as terrorist or extremist?	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
<b>If you have answered YES to this question please complete supplementary form B (Prevent Duty) and submit with this form.</b>		
<b>4 CONFIRMATION</b>		
I confirm I have read the School of Law guidance on research ethics and integrity	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
<b>Signed: Daniela Rodriguez Gutierrez</b>		
<b>Date: 04-11-2016</b>		

**Research Ethics and Integrity**  
**Supplementary form A: Level Two Approval**

School of Law

University of Edinburgh

1 DETAILS OF RESEARCH AND INVESTIGATOR/S	
Name and position	Daniela Rodríguez Gutiérrez, second year Criminology PhD student
Title of research	Penal transformations: The case of the Chilean juvenile justice system.
Proposed start date	The project has been in constant development and improvement since the start of the PhD in September 2015. Fieldwork is planned to start in January 2017.
Duration of the project	The complete research project last three years, including the design and approval of the project, fieldwork, analysis and dissertation writing. In this context, fieldwork is planned to last until June 2017.
Co-investigator/s (if any)	-
Project Summary (including details of methodology, not more than 150 words)	<p>The present project intends to address processes of penal transformation in both theoretical and empirical perspective. In order to do so the project will be focused on the specific case study of the drastic reform of juvenile justice in Chile that took place in the years 2005-2007. The broader aim of this study is to assess and extend current theories of penal transformation by examining how systems change in an unexplored (Southern) context.</p> <p>In order to do this I will conduct interviews with key actors in the reform process. It will also involve a documentary analysis of national reports, surveys, and official information regarding the economic, political, social and criminal situation of the country related to the</p>

	reform of the juvenile justice system. This implies access to archives in Chile.
I confirm I have read the School of Law guidance on research ethics and integrity	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
<b>If you are a student, please provide the following additional information:</b>	
Email address	S1428148@sms.ed.ac.uk
Degree programme and year	PhD in Criminology, second year (started in September)
Course to which this research relates	PhD Dissertation
Name of supervisor	Dr. Anna Souhami and Prof. Lesley McAra
<b>2 RESEARCH PARTICIPANTS</b>	
Does the research involve participants specifically recruited for this research project?	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
How many participants will be involved in the study?	Between 20 to 30 participants.
What criteria will be used in deciding on inclusion/exclusion of participants?	Key people involved in the process of design, legislation and initial implementation of the LRPA (juvenile justice system in Chile). This may involve advisers, people involved in the institutions associated to juvenile justice, judges of the old and new system, Ministers of the government at the time, Deputies and Senators who participated in the process of debate, modification and approval of the reform of the juvenile justice system. Because of the bias that the position of the interviewee may introduce on his/her statements and claims, retired politicians and assessors will be privileged.
How will the sample be recruited?	Most of the people involved in the design, legislation and implementation of the LRPA still work in public positions or institutions that make access to them easier through official and public e-mail accounts. Regarding those retired, they can be contacted through their

	political parties' offices or using a snowball technique with previous interviewees.
Are any of the participants/ data subjects likely to be:	
• Under 16 years of age	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
• Children in the care of a Local Authority	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
• Known to have additional support needs	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
• Physically or mentally ill	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
• Vulnerable in other ways (e.g. in some form of compulsory detention or surveillance)	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
• Unlikely to be proficient in English	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
• In a client or professional relationship with the researchers	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
• In a student/teacher relationship with the researchers	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
• In any other dependent relationship with the researchers	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
• Have difficulty in reading and/or comprehending any printed material distributed as part of the study	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
Will participants receive any financial or other material benefits because of participation?	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
If YES what benefits will be offered to participants and why?	
<b>3 POTENTIAL RISKS TO PARTICIPANTS/ DATA SUBJECTS</b>	
Could the research induce any psychological stress or discomfort in participants?	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>

If YES, what measures will be taken to address this?	
Could the research lead to disclosure or observation of illegal behaviours or activities?	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
If YES, what procedures will be followed?	
Is there any purpose to which the research findings could be put that could adversely affect participants/ data subjects?	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
If YES, what steps will be taken to protect them?	
Will the true purpose of the research be concealed from participants/ data subjects?	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
If YES, what will be concealed and why?	
If using secondary data, is the reuse of data compatible with what subjects were originally told about the use of their data? (e.g., were they told it would be destroyed at the end of the original study?)	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
If NO please explain. Is further consent required?	
If using secondary data, is it likely that people or places could be identified from the data?	YES <input type="checkbox"/> NO <input type="checkbox"/>
If YES, are further measures necessary to protect data subjects?	
Could this research adversely affect participants/ data subjects in any other way?	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
If YES outline the risks. What steps will be taken to protect them?	


4 POTENTIAL RISKS TO RESEARCHERS	
At any stage in the research could researchers' safety be compromised? (e.g. will it involve travel to high risk areas, dangerous activities, or risky individuals or groups?)	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
If YES, what procedures have been put in place to deal with potential problems?	<p>It may be that depending on the situation of my interviewees (for example being old, ill, or with limited mobility), I would have to go to their houses to conduct the interviews. If that is the case I will make sure that there are at least two different people who know about my location, my phone number and are in position of going to pick me up if needed. This can be done using my family, friends and colleagues network in the country, who are spread around the city, thus it is highly likely that I will be close to some of them. Despite this, I will privilege to conduct the interviews in places such as the office of my interviewees if they have one, rather than their homes. I will also carry a phone with me all the time.</p> <p>The institutions such as the parliament or public libraries that will give me access to archives are public places in central and secure areas of the country, which also have security guards and cameras. These places are only open to the public during working hours. Therefore, I will not be late at night in any of them. I know Santiago and Valparaiso really well, as such I also know which ones are the dangerous areas of the city and I will not need to go to those places. The public transport between my accommodation and the public institutions I may need to attend is direct and safe.</p> <p>I will decrease any possible risks by always letting the people living with me and friends or colleagues located close to the place where I am going know where I am. I will not go late at</p>

	<p>night alone, and will avoid carrying my computer or any expensive technological element that may generate unwanted attention. If any technology is needed at some point (such as a recorder for the interviews) it will be carried in a normal regular bag, so it cannot be identified from the outside.</p> <p>Finally, I will be in contact with my supervisors every two weeks by e-mail and we will skype once a month as a standard rule.</p>
To the best of your knowledge, could any institutional or personal conflicts of interest arise from this research?	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
If YES please explain.	
Do any of those named above need training to enable them to properly conduct the proposed research safely and in accordance with ethical principles?	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
If YES what training is needed?	
Does the research require a risk assessment evaluation (e.g. if your safety may be compromised, or if your travel or other insurance requires it)?  <i>IF YES please contact the RKO Manager.</i>	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
Do the researchers named above need to be cleared through the Disclosure/Enhanced Disclosure procedures?  <i>IF YES please contact the RKO Manager.</i>	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
<b>5 INFORMATION AND CONSENT</b>	
What information will be provided to participants prior to their consent?	A letter or presentation about the project, the researcher and the context of the research will be sent together with the e-mail of presentation and request of participation.



(e.g. information leaflet, briefing session)	<p>Moreover, the possibility of asking for more information if needed will be clearly expressed. Before asking their consent it will be make sure they understood the written document provided by verbally addressing the information provided in the presentation letter. Likewise, it will be clearly specified both verbally and in the written informed consent that they can stop the interviews or refuse to participate at any point without adverse consequences. Also the possibility of identifying information in the status of 'off the record' during the interview will be clearly stated.</p> <p>The informed consent will clarify that anonymity cannot be fully ensured due to the public role some of the interviewees had in the process of the LRPA. However, it will also be clearly stated that access to the primary data (transcripts, audio recordings), will be only available to me and my supervisors. Likewise, they will be allowed to state the position, heading or name under which they want to be identified in any written and verbal document produced during or after the PhD.</p>
Can you confirm that participants will be informed of their right to withdraw from the study at any time and for any or no reason at all?	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
If NO, please explain	
Will it be necessary for participants to take part in the study without their knowledge and consent?	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
If YES, please explain	
Will written consent be obtained from all participants/ data subjects?  If NO, explain why.	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>

For examples of written consent forms, see <a href="#">[link]</a>	
If research involves participants from any of the vulnerable groups listed in section 2, what arrangements will be made to ensure informed consent?	The research refers to the Chilean case study. Therefore is expected that participants will speak Spanish instead of English. This does not represent a problem because the researcher is Chilean, sharing the same native language including local expressions and slang.
<b>6 DATA PROTECTION</b>	
Will any part of the research involve audio, film or video recording of individuals?	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
If YES, please describe	Audio recording of the interviews conducted in order to facilitate the data analysis.
How will the confidentiality of data, including the identity of participants, be ensured?	Due to the political position or the key role of the interviewees in the process of transformation to be researched, they can be easily identified. In order to address this, interviewees will be provided with an informed consent explaining the use of the data to be generated and the conditions and characteristics of the research. It will be clearly mentioned both verbally and in written form that they can withdraw at any point and that they can state before or during the interview if there is some information they do not want to be part of the research. It will be specified as well that they can refuse to be recorded or ask me to stop recording at any point. I will also ask them how they want to be described in the research. Some of the interviewees may share similar roles and/or political position at the time, thus this will help to give them some level of anonymity. I will not share the information of any interviewee with other interviewees, and if required, I can block part of my dissertation for publication with the University Library. All the information will be saved and coded immediately based on the form of description selected by the interviewee. Therefore, unless they want it that way, their names will not be present in any file or

	document, even within the stored data. As the interview will be audio recorded, as soon as the interview is over the audio file will be stored in the hard drive and erased from the recorder. This, together with the security measures adopted to protect the data (encrypted, password protected devices and the University secure storage) will increase the protection of the information given and the identities of the interviewees. Finally, I will have ongoing discussions with my supervisors and permanent communication to address any new issue that may arise.
Who will have access to the data? (e.g. researcher only, members of research team, supervisor)	The researcher and both supervisors.
How and where will the data be stored and in what format?	The data will be stored in a personal hard drive which will be kept in a locked drawer. It will also be encrypted in my laptop for daily work and will re-main in the University server under my personal account as a student. The format will be the generic one for each kind of file recommended by the University of Edinburgh, information obtained in a workshop of research data management provided by the Senior Research Data Officer.
What security arrangements have you put in place for the data?	The data will be anonymised and stored under codified files, kept in a safe place such as a password protected laptop and hard drive. It will be also stored in the university servers, which are secure and protected. The files will be encrypted.
<p>Please confirm that you will retain the data for the length of time required by the University's Data Management policies:</p> <ul style="list-style-type: none"> <li>• For staff: 10 years after the end of the project</li> <li>• For students: for the duration of the project</li> </ul>	YES 
How will the data be disposed of when it is no longer required?	Electronic data will be deleted and paper data will be shredded when no longer needed.

7 DATA USAGE	
How will the results of the research be used?	The results will be used in the production of my PhD dissertation.
What feedback of findings, if any, will be given to participants?	If participants require it, they will receive a brief report with the main results. They will also have access to the final product of the dissertation
Is any information likely to be passed on to external companies or organisations in the course of the research?	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
If YES, please describe	
Does your project require copyright for use of images, photography, audio or video services, or third party release?  <i>If YES, see generic legal agreements here</i>  <i>[link]</i>	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
8 COLLABORATIVE WORKING	
Does your research involve collaboration with other academic/ non-academic partners, and/or employing others such as guides or translators?	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
If YES:	
i) what steps will be taken to ensure that all individuals adhere to UoE research ethics and integrity standards?	
ii) Please confirm the ownership of intellectual ideas and research outcomes, as well as the specific conditions in which these might be shared, will be agreed upon by all collaborators ( e.g. this might include agreement of authorship, recognition	YES <input type="checkbox"/>

of other contributions, acknowledgement of sponsors.)	
<b>9 CONFIRMATION</b>	
I confirm that I am aware that I can seek advice from the Research Ethics and Integrity Committee at any stage of the research.	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
I confirm that, should my research change so that the responses to these questions are no longer applicable, I will seek further ethical approval.	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
<b>Signed: Daniela Rodriguez Gutierrez</b>	
<b>Date: 04-11-2016</b>	

## Fieldwork Assessment Form FA1

(Refer to Notes for Guidance before completing this form)

School Assessment No.	
Title of Fieldwork Activity:	Penal transformations: The case of the Chilean juvenile justice system.
Location(s) of Work:	Chile (Santiago and Valparaíso)
Duration (incl. dates From / To) :	From 13 <sup>th</sup> January until 12 <sup>th</sup> June 2017

### Brief Description of Fieldwork:

The present project intends to address processes of penal transformation in both theoretical and empirical perspective. In order to do so the project will be focused on the specific case study of the drastic reform of juvenile justice in Chile that took place in the years 2005-2007. The broader aim of this study is to assess and extend current theories of penal transformation by examining how systems change in an unexplored (Southern) context.

In order to do this I will conduct interviews with key actors in the reform process. It will also involve a documentary analysis of national reports, surveys, and official information regarding the economic, political, social and criminal situation of the country related to the reform of the juvenile justice system. This implies access to archives in Chile. Therefore, fieldwork will imply visiting the public libraries of institutions such as the parliament of the country in the city of Valparaíso, and talking to the people involved in the process of transformation. Due to the location of the parliament and that most of the state institutions are in Santiago, fieldwork will imply travel between the two cities (which are connected by highway, local routes and bus in a trip that lasts 1,5 hours).

**Hazard Identification:** Identify all the hazards; evaluate the risks (low / medium / high) and describe all necessary control measures.

<b>Hazard (s)</b>	<b>Risk</b> L / M / H	<b>Control Measures</b>	<b>Risk after Control</b> L / M / H
<b>Physical Hazards</b> (e.g. extreme weather conditions, cliffs, caves, mountains, marshes, quicksand, fresh / seawater, mines, quarries, tides)	L	I will not be facing any of those elements in my fieldwork.	
<b>Biological Hazards</b> (e.g. poisonous plants, venomous / aggressive animals, soil or water micro organisms, insects)	L	I will not be facing any of those elements in my fieldwork.	
<b>Chemical Hazards</b> (e.g. pesticides, dusts, contaminated soils, chemicals on site)	L	I will not be facing any of those elements in my fieldwork.	
<b>Man-made hazards</b> (e.g. machinery, electrical equipment, vehicles, insecure buildings, slurry pits, power and pipelines)	L	I will not be facing any of those elements in my fieldwork.	
<b>Personal Safety</b> (e.g. lone working, attack on person or property, first aid)	L	The fieldwork implies work in libraries and state institutions. All of them are open to the public only in working hours.	

		<p>Thus it will not imply late lone working and it will be conducted in public but secure and protected institutions. I grew up in Santiago, therefore I know the demographic organization of the city and the best ways of travelling between places. The public transport is secure and easy to use.</p> <p>Regarding the interviews, places like the offices of interviewees will be privileged over more private places such as their houses. However, some of the interviewees may be quite aged. Therefore, it may be needed at some point to conduct the interview in their houses. If that is the case, I will make sure some of my family and friends network in the country are aware where I am going and for how long I am expected to be there. If possible, I will ask someone to pick me up. I will always be with my phone while on field. Besides, it is really common in Chile to leave in gated communities or in flats complex which involve the presence of a security guard in the main entrance. I will introduce myself to them if needed.</p> <p>Regarding the presence of elements that may increase risk of being harmed in any way (such as robbery), I will not take with me any expensive elements (such as computers or big cameras), and my belongings will be always hidden inside a normal bag.</p> <p>Finally, the location of first aid centres in the city is well known for me, together with the houses of everyone I know that can be of help if needed. I will also e-mail my supervisors every two weeks to let them know how everything is going and I will</p>	
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		skype them once a month as a standard rule.	
<b>Environmental impact</b> (e.g. refuse, pollution, disturbance of eco-systems)	L	The pollution levels of Santiago are not damaging for me, because I grew up with them. They have never impacted on my health.	
<b>Other hazards</b> (e.g. procedural, manual handling) Please specify.	L	I will not be facing any of those elements in my fieldwork.	

*\*Continue on separate sheet if necessary*

Emergency Procedures: Specify arrangements for first aid, special emergency procedures, survival aids, communication, etc.)

*I know the emergency number of the police, firemen, and ambulances in Chile, together with the location of GPs, hospitals and private clinics. The city also has drugstores every few blocks and there is always an expert inside them. I will carry my phone with me all the time.*

Additional Information: Identify any additional information relevant to the fieldwork activity, including supervision, training requirements, information, specialist equipment or clothing, inoculations, etc.

I will keep contact with my supervisors every two weeks using e-mails and once a month using skype.

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Contact Information: Include details of both the University designated contact and on-site contact.

University	Name:	Tel. Contact:
On-site	Name: Carolina Gutierrez	Tel. Contact: +56 992784149 +56 2 28857313
Address of residential base: Don Bosco 3861-B, San Miguel, Santiago, Chile.		

Has necessary training and information been given?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
Is there adequate provision for those with health problems or disabilities?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
Are there adequate First Aiders available?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
Is there suitable supervision (i.e. Staff to Student ratio)?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
Is permission required to work on site?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
Are there suitable travel arrangements and licensed drivers?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>

Is adequate insurance cover in place? (Contact Finance Office for advice, 50-9154)	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
Have all participants submitted next of kin information to field trip organiser / School Office?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
Have route notification schedules been provided to Police or Coastguard?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>

Assessment carried out by:

Name:		Date:	
Signature:		Review Date:	
Title (e.g. Group Leader, Lecturer, Research Student, etc):			

Assessment Authorised by Head of School / Fieldwork Supervisor:

Name:		Date:	
Signature:			



**Annex 2: Informed consent 'Transformaciones penales: El caso del Sistema de justicia juvenil chileno'**

Actualmente me encuentro realizando mi proyecto de investigación como candidata a Doctora en Criminología en la Universidad de Edimburgo. Me gustaría saber sobre el proceso de transformación en el sistema de justicia juvenil chileno en los años 2004-2007, cuando la Ley de Responsabilidad Penal Adolescente [LRPA] fue discutida, aprobada e implementada. Dado su rol en dicho proceso, el conocimiento que pueda proveerme me será extremadamente útil para desarrollar mi tesis.

Su ayuda en esta investigación será altamente apreciada. Esto implica una o dos entrevistas que se agendarán de acuerdo a su disponibilidad. La duración de las entrevistas es de aproximadamente una hora, pero esto también puede coordinarse de acuerdo a sus tiempos y necesidades.

Tengo presente que es complejo asegurar completo anonimato dado al perfil público de su rol en el proceso de la LRPA. Por tanto, pretendo tomar medidas para mantener cuanta confidencialidad sea posible. Por ejemplo, acceso a la información primaria (transcripciones o grabaciones) solo se compartirá con mis supervisoras, la Doctora Anna Souhami y la Profesora Lesley McAra en caso de que ellas lo soliciten. Asimismo, usted podrá definir bajo qué rol/cargo/posición/nombre/género ser referido durante la investigación y en los productos que de ella surjan y su participación no será compartida con otros entrevistados. La información analizada será utilizada en mi proyecto de tesis para obtener el grado de Doctora en Criminología en la Universidad de Edimburgo y subsecuentes publicaciones asociadas.

Si usted está de acuerdo, quisiera grabar esta entrevista. Sin embargo, la grabadora puede ser apagada en cualquier momento. Asimismo, usted puede detener la entrevista y cancelar su participación en mi proyecto en cualquier momento y sin consecuencias.

Si acepta participar, por favor complete la siguiente parte de este consentimiento:

Yo acepto ser entrevistado para la presente investigación. Comprendo que mi entrevista no puede asegurar anonimato de forma definitiva, pero se tomarán medidas para mantener toda la confidencialidad que sea posible. Comprendo que la información será utilizada como parte de la investigación para doctorarse en Criminología en la Universidad de Edimburgo. Comprendo que puedo retirarme de este estudio en cualquier momento.

Fecha:

Firma:

Daniela Rodríguez, correo electrónico:



### **Annex 3: Interview quotes in Spanish**

#### **Chapter 3: Methodology**

‘No es una crítica a ninguna persona que haya estado en el cargo, es un tema institucional’ (M., 2017)

‘Toda la riqueza de la discusión que se dio en la cámara de diputados, que fue muy buena y de muy buen nivel y en términos de conceptos que están en todo sistema de justicia juvenil y todo estaban súper bien instalados en la primera versión del proyecto, agarra el último año súper político, súper permeado por elecciones en un, con donde siempre los jóvenes y la delincuencia juvenil es un tema que se le ve así como una amenaza, un monstruo negro, digamos y todo lo demás, y en el senado empieza a desmantelarse el proyecto y a convertirse en lo que finalmente queda’ (L., 2017)

‘Yo realmente dejé mi asesoría ahí, entre otras cosas porque me di cuenta que no, que ya no había, digamos, mucho interés’ (I., 2017)

‘A mi no me cabe ninguna duda de que la ley es positiva, pero sin que dispusiera de un andamiaje institucional acorde con el espíritu y los objetivos de la ley.’ (D., 2017)

‘Hubo pocos oídos, los escucharon pero no los oyeron mucho’ (R., 2017)

#### **Chapter 4: A new society: the base for the future juvenile justice**

‘Yo entré al gobierno el año 1990, soy de la generación que asumió este país con 43% de pobres’ (C., 2017)

‘Pero aparte de la dictadura fue una crisis muy dura que produjo enorme cantidad de problemas sociales de pobreza, de indigencia, de no se, Chile cayó 14 puntos en el PIB’ (M., 2017)

‘Eran organizaciones que estaban rearmándose, sobreviviendo muchas de ellas, con unas presiones enormes y con unos estados de emergencia que se disparaban por todos lados, no solamente los niños privados de libertad, sino que también en otros escenarios tremendamente complejos y muy dolorosos, y eso hacía que de repente nos juntáramos, hacíamos algunas acciones y nos desvinculábamos, y perdíamos presencia’ (O., 2017)

## **Chapter 5: From no one's concern to a national problem: how Juvenile Justice and the need of a reform rose to the centre of national debate**

'En la transición hacia la década de los '90 aparece la pasta base y se genera una dificultad yo te diría, de envergadura en el país, sobre todo en los sectores más pobres' (O., 2017)

'En algún momento entró la locura en este país de que todo se debía al consumo de drogas' (J., 2017)

'Represivo' (K., 2017)

'Abusivo' (P., 2017)

'Habían temas de carencia, de estado de emergencia, de ollas comunes, de teniendo que suplir en comunidades pobres y excluidas [...] temas de educación, temas básicos de salud, de cuidado, de entretención, y de cuestiones básicas como vivienda y alimentación.' (O., 2017)

'Cuesta ser tolerante, entonces mejor que la ley ordene, que vengan los pacos y solucionen las cosas, se pronuncie o venga la ley.' (E., 2017)

'El tema de infancia también requiere como, no hacer una revolución, pero también voluntad política, acuerdos políticos, acuerdos ciudadanos y Chile es muy poco tolerante' (E., 2017)

'El tema comenzaba a ser con los adolescentes especialmente, a ser más complicado, porque ahí se trataba ya de comenzar a instalar ya la idea de control' (Q., 2017)

'La policía tortura, la policía abusa' (H., 2017)

'En la década de los '90 post dictadura, fue una década que claramente habían los vientos a favor de mayor protección de los derechos humanos, incluyendo las reglas del debido proceso, el derecho a defensa influyeron mucho en proteger o promover un cambio al sistema procesal y pasar de un sistema inquisitivo a un sistema adversarial' (J., 2017)

'Veníamos saliendo de la dictadura, todos de una generación [...] formadas en un autoritarismo social importante, las cosas se resolvían dentro del dominio de lo penal' (O., 2017)

'Entonces fue, en algún sentido, un movimiento yo te diría al final muy político también en que yo creo equivocado también, en el sentido de que se propiciaba algo que es muy latinoamericano que es que cambiando las leyes



tu podías mejorar la situación de la gente, algo que no es así digamos' (C., 2017)

'No había un reconocimiento formal de la noción de derechos respecto a estos sujetos' (B., 2017)

'Que no tengan derecho a un abogado cuando cometen un delito, que los puedan meter por años encerrados' (P., 2017)

'Punto de quiebre' (N., 2017)

'El comité de los derechos del niño seguía presionando, le seguía diciendo señor estado usted está al debe en sus compromisos internacionales, no hay una distinción clara entre niños, adolescentes y adultos' (H., 2017)

'Esa fue una época en la que en américa latina en general se impulsó mucho el tema de la reforma legislativa como un cambio radical en la situación de los niños, o sea, fue una época de gran influencia de la convención sobre los derechos del niño' (C., 2017)

'El proyecto se va desnaturalizando y cada vez se aleja mas de los estándares de la convención de los derechos del niño y se acerca más a los que es un derecho penal de los adultos digamos, puro y duro donde la especialidad va cada vez perdiendo más espacios y donde derechamente empiezan a imperar las lógicas de un derecho penal de adultos' (H., 2017)

'Indiferencia' (H., 2017)

'Negligencia' (O., 2017)

'Falta de interés' (P., 2017; M., 2017)

'Toma digamos mucha fuerza la convención, pero se queda muy apegada a la convención judicialista en exceso' (Q., 2017)

'Soledad Alvear [...] se da cuenta de que la reforma procesal penal puede ser el sello de la transformación que se requiere en temas de justicia' (M., 2017)

'En chile había necesidad de garantizar eficiencia y eficacia' (N., 2017)

'A partir del año 1990 con el término de la dictadura comienza un fenómeno bastante particular y concreto en que la sociedad traslada su centro de preocupación que había sido impuesto con un sesgo biológico de la dictadura como el enemigo interno ese terrorista a tener siempre un enemigo interno que en el fondo es el lugar ocupado por la delincuencia' (R., 2017)

‘el sector más conservador incorporaba la UDI y los que habían patentado a nivel personal el tratamiento de la seguridad ciudadana como tema pa’ rédito político’ (A., 2017)

‘Espina recién había salido primera mayoría en el senado, con un discurso muy fuerte de seguridad ciudadana, no tenía ningún incentivo pa’ dejar de tener ese discurso.’ (A., 2017)

‘Para las elecciones siempre el tema de seguridad ciudadana es uno de los primeros y todos ofrecen, critican al de turno porque no hace nada y ofrecen’ (A., 2017)

‘En el fondo es porque al banco interamericano, sobre todo al BID [...] PNUD a la fundación FORD les interesaba generar espacios de derechos, pero había otras también, otros intereses [...] necesitaban tener seguridad para la inversión, generar espacios de seguridad’ (N., 2017)

‘Cuando Chile empieza a crecer, nuestras tasas, nuestro ingreso per cápita sube, empezamos a resolver problemas de pobreza, las violaciones masivas y sistemáticas desaparecen, tenemos una democracia, que bueno, empiezan a cambiar las expectativas y las demandas’ (F., 2017)

‘El tema de seguridad entre el año ’94 y el año 2005, o el año 2004 cambió radicalmente la temperatura, pasó a transformarse en una de las principales demandas de la población’ (F., 2017)

‘Muy atrasada porque Chile unió al retraso de la dictadura 20 o 25 años de retraso anterior digamos, entonces fue mucho, fueron 40 años’ (M., 2017)

‘Hay sensación de inseguridad y el sistema funciona como las pelotas ¿entiendes? Yo creo que ahí hay debilidad institucional.’ (E., 2017)

‘Había mucho consenso en que el sistema de menores claramente estaba fuera de todo. O sea que primero no tenía, no cumplía con estándares de debido proceso, no aseguraba en el fondo lo que la reforma procesal penal aseguraba pa’ los adultos’ (L., 2017)

‘En ese tiempo esto era un tema que no existía, del punto de vista que nadie pensaba en una reforma jurídica, nadie veía un problema de derechos fundamentales ahí.’ (M., 2017)

‘La hizo posible’ (M., 2017)

‘Bajo el bonito nombre de la protección se cometían todo tipo de violaciones de derechos’ (P., 2017)

‘Se instaló mucho más la idea de que esta ley lo que iba a hacer al final era terminar con la impunidad’ (C., 2017)

## Chapter 6: A new Juvenile Justice System

‘En el senado claramente prima el criterio más pro seguridad, y prima además, y esto yo creo que hay que decirlo, que estábamos cerrando el gobierno, un gobierno y prontos a entrar al otro, entonces la presión política de ambos lados por sacar el proyecto o porque no saliera y por lo tanto machacarle a ese gobierno que no lograba enfrentar la delincuencia juvenil, también hizo que se fuera sacando esto, no se si rápidamente pero generando consensos que sacrificaron al proyecto de ley en buena parte digamos’ (J., 2017)

‘Seguimos teniendo problemas con la concertación que se desbancaba ¿no? El partido radical con el ministro Gómez que había quedado muy molesto porque lo habían sacado del ejecutivo por supuesto, en la discusión en el senado, no nos dio los votos’ (G., 2017)

‘Se promulga durante el último año del gobierno del presidente Lagos con una serie de deficiencias que nosotros presidíamos que iban a ser complejas, digamos, con una estructura país que no, a ver, que evidentemente no iba a poder cumplir con la pretensión restaurativa, reparadora, de reinserción que tenía la ley de responsabilidad penal adolescente.’ (O., 2017)

‘Lo que prima es una visión bastante represiva de un sector político en particular, bastante más identificado con la derecha evidentemente, pero que no están ajenos otros parlamentarios de otras corrientes políticas’ (R., 2017)

‘Más duro’ (E., 2017)

‘Caótico y dependiente del proceso adulto’ (L., 2017)

‘Pervertido en sus aspectos principales’ (J., 2017)

‘Tuvimos algunos reportajes de hecho la tramitación la tuvimos que apurar, la presión que tuvimos fue que iba a salir un informe especial, un contacto al día siguiente de la comisión investigadora y que el contacto venía muy malo, estaba poniendo mucho énfasis en las críticas al sistema y nosotros dijimos, después de ese contacto nos va a costar mucho más llegar a acuerdo con la comisión mixta, nos van a sacar la cresta, nuestros parlamentarios nos van a mandar a la cresta.’ (G., 2017)

‘Enemigo interno’ (R., 2017)

‘Había una presión ciudadana de que la ciudadanía quiere sistemas de persecución penal que sean eficientes y efectivos donde la criminalidad

juvenil claro, es una preocupación más para la comunidad. Entonces claro, el estado tenía una preocupación interna en torno a decirle a la comunidad de que estaba efectivamente enfrentando la criminalidad juvenil' (H., 2017)

'El fenómeno de la delincuencia juvenil estaba muy teñido por la percepción general de la ciudadanía respecto a la delincuencia en general. Entonces también se presionaba por un sistema que fuera más duro' (R., 2017)

'Potenciar lo que tenemos' (M., 2017)

'Va primero la reforma procesal penal jerárquicamente y después viene este tema' (M., 2017)

'Un tribunal compuesto por un juez penal, un juez de familia y un juez no letrado incluso' (G., 2017)

'el proyecto se va desnaturalizando y cada vez se aleja mas de los estándares de la convención de los derechos del niño y se acerca más a los que es un derecho penal de los adultos digamos, puro y duro donde la especialidad va cada vez perdiendo más espacios y donde derechamente empiezan a imperar las lógicas de un derecho penal de adultos' (H., 2017)

'Hay un momento clave de la discusión que es cuando el proyecto de ley pasa de su primer trámite que fue en la cámara de diputados, donde si bien tuvo cambios y algunas reducciones de estos espacios positivos que yo te decía, seguía siendo un proyecto que mantenía esas líneas: salidas alternativas fuertes, respuestas punitivas más o menos moderadas. Pero cuando pasa al senado, dada la composición político institucional de nuestro congreso, en el senado es donde finalmente, diría yo pervertido el proyecto de ley en sus aspectos principales' (J., 2017)

'La responsabilidad fundamental estuvo en el senado. Luego la comisión mixta en general aprueba el proyecto, discusiones más, discusiones menos pero sale el proyecto más o menos similar' (R., 2017)

'Yo creo que el ejecutivo hizo un buen trabajo inicial enviando un proyecto que estaba bastante acorde con las prescripciones obligatorias de la convención de los derechos del niño' (R., 2017)

'Era un buen proyecto y sale un buen proyecto de la cámara en esos términos, en término de los principios que inspiraban a este grupo de personas que tenía una fuerte base digamos en formación en derechos humanos y una fuerte base en formación de derechos propios de la infancia, de la juventud, y que conocía bastante de este tema.' (L., 2017)

'Yo creo que la cámara estuvo bien influida por el ejecutivo' (I., 2017)

‘Sin mucho liderazgo por parte del gobierno, yo ahí te diría, si ahí me permites nombrar así, o sea si yo pudiera identificar un gran culpable en este tema fue un poco el ejecutivo en términos del rol que le cabe como co-legisladores digamos.’ (L., 2017)

‘Cuando se aprueba en contra de nuestra orientación como comisión, se aprueba finalmente en el parlamento, me junté con el ministro en su despacho unos días después, el ministro me dijo: yo recibí la orden de la presidenta que fue: Ministro, la ley de responsabilidad adolescente no se posterga un día. Había un clima país, político, mediático muy tensionado respecto al tema de la violencia juvenil, la delincuencia juvenil, la impunidad de los jóvenes.’ (O., 2017)

‘En ese momento nosotros sabíamos que la ley tenía muchos problemas [...] Pero Solís nos dijo: miren ustedes pueden hacer lo que sea pero la ley no se cambia, ustedes están con la implementación, o sea no podemos meternos con el texto.’ (M., 2017)

‘Hubo una urgencia por aprobar la ley para darle una señal a la opinión pública de que estábamos haciendo algo en materia de delincuencia juvenil’ (D., 2017)

‘¿dónde están los trabajos sobre criminalidad? ¿Dónde? De los ’70, ’60, de la época, nada, había el sistema, el sistema acá y los pobres, mil cosas ideológicas, o por otro lado, la raza chilena ladrona [risas], pero todo muy poquito.’ (M., 2017)

‘Hoy día un tipo que es ebanista habla de criminología, ya se nos acabó el período en que éramos nosotros los que hablábamos y al hablar era como bueno, no hay caso, ya no es así. Todo el mundo opina, sabiendo o no sabiendo, no hay una forma concreta’ (M., 2017)

‘La mayoría tenía poco conocimiento, si, yo tampoco soy de los que espere que los parlamentarios o los políticos tengan pleno conocimiento, yo más bien espero que tengan buen ojo para elegir asesores digamos, pero había poco conocimiento en general’ (J., 2017)

‘Yo te diría que con una mirada de crítica hacia la culpabilidad de las personas, sin una capacidad mínima de entender que hay unas conductas, síntomas y signos que son expresión de la adecuación de esas personas a contextos de daño, de exclusión, de problemas, carencias y trauma. Acá si tu te portas mal es porque tomaste la decisión de portarte mal digamos’ (O., 2017)

‘Incluso operan desde la desconfianza: si esto lo está diciendo el señor de la defensoría, o el señor de UNICEF o la señora de unicef o la señora

académica tanto, entonces esto debe ser al revés. Y créeme que eso me tocó verlo casi expresamente.’ (J., 2017)

‘La mayoría yo te diría que tenían una actitud bastante irresponsable y bastante negligente, yo casi me atrevería a decir que muchos de ellos votaron sin jamás haber leído, sino que porque ya tenían una idea preconcebida, porque tenían una convicción valórica-política’ (O., 2017)

‘Hay una gran ola en pos de la seguridad ciudadana, en especial, los niños delincuentes algo tenemos que hacer con ellos. Entonces teníamos por esos dos lados, tanto la política más populista como del lado de los derechos humanos internacionales’ (A., 2017)

‘Lo que se veía era un clima muy favorable a medidas de carácter represivas, en que los parlamentarios querían anotarse ranking de quien presentaba los proyectos más severos, más sancionadores, más penalizadores; sin mirar el conjunto del sistema y sin mirar la dimensión de resocialización’ (D., 2017)

‘Una de las variables que se desarrolló en la región latinoamericana dice relación con la creación de una comunidad científica y esa comunidad científica fue la que movió buena parte de las reformas en Latinoamérica, y esa comunidad científica era pequeña pero muy cara digamos’ (H., 2017)

‘UNICEF fue muy importante, de opción fue muy importante, del hogar de cristo fue muy importante, paz ciudadana tuvo su rol también; así de los que recuerdo, y de hecho todos ellos integraron, de alguna manera u otra, la comisión de expertos.’ (L., 2017)

‘La ley se plantea que toma en cuenta la ley 5/2000 española, el estatuto de Brasil que es más antiguo porque es del año 1991 y la ley penal juvenil de Costa Rica’ (E., 2017)

‘El interés convención de los derechos del niño de alguna manera estaba cubierto por la comunidad científica y por operadores inteligentes y el interés de seguridad ciudadana estaba siendo cubierto por la comunidad y por los parlamentarios derechamente, por los parlamentarios’ (H., 2017)

‘La política más populista como del lado de los derechos humanos internacionales’ (A., 2017)

‘Las razones técnicas fueron desechadas y lo que se levantó fue una decisión política que lo que pretendía era, primero cumplir con el compromiso del gobierno de turno de poner en marcha este sistema, de responder a la presión social que quería que se implementara y no seguir postergando, básicamente eso, básicamente eso’ (R., 2017)

‘A la hora de analizar problemas, a la hora de proponer respuestas o soluciones a esos problemas son justamente los que más se escuchan son la voz de la comunidad y la voz de los parlamentarios, de los que hacen, diseñan las políticas públicas y las aprueban, son los más escuchados.’ (H., 2017)

‘Yo creo que había una preocupación ciudadana por la delincuencia juvenil, del punto de vista político estrictamente hablando es razonable que el gobierno haya tratado de mostrarlo como un instrumento de lucha contra la delincuencia juvenil’ (C., 2017)

‘Creo yo que ahí que lo que prima es básicamente la presión social en términos de mantener la dureza de un proyecto y el compromiso político de quienes finalmente hacen el diseño normativo, que son los parlamentarios, una autoridad política que responde al electorado’ (R., 2017)

‘Los parlamentarios en el marco de la discusión del proyecto, que buscaban siempre elevar la sanción, limitar las posibilidades de respuesta en medio abierto privilegiando respuestas del sistema cerrado.’ (B., 2017)

‘Si tu comparas el proyecto original del 2002 con el texto que se aprobó el 2005 uno ve varios contenidos de especialidad en el 2002, un texto más bien neutral el 2005, donde no se moja mucho el parlamento respecto de las definiciones, reiteración, concurso, mayor regulación de cautelares, un estándar distinto para las salidas procesales, etcétera. Eso, claro, el 2002 estaba, pero en el proyecto que aprobó el parlamento no estaba.’ (A., 2017)

‘Se adecuaba a la tendencia internacional’ (H., 2017)

‘Adecuada para la gran, gran mayoría de los casos’ (R., 2017)

‘Es el mejor proyecto posible’ (M., 2017)

‘Al final la ley no cumple con su propósito, con su énfasis central, que insisto no es punitivo, es reinserción’ (D., 2017)

‘Pero Forni le da vuelta y dice: tampoco se cumplirá si un cabro va a estar tres meses adentro, es cierto, entonces una duración mínima de un año. Eso al mundo de las ONGs les provocó mucho, mucha molestia, incluso UNICEF sacó una reacción en contra, y a mi con el tiempo no me pareció, no me habría parecido una mala fórmula. Pero ese es un tipo de acuerdo al cual la UDI en la cámara de diputados estaba dispuesta a llegar, que me parece un acuerdo súper razonable, súper razonable, o sea voy a tener máximo, pero también quiero tener un mínimo.’ (G., 2017)

‘En el senado empieza a quedar la crema, cambia el catálogo, lo vincula definitivamente al proceso adulto, se mete la sanción accesoria’ (L., 2017)



‘Había un acento bastante mas claro en el principio de la libertad, de la privación de libertad como último recurso, la respuesta penal estaba básicamente constituida por penas no privativas de libertad, reservando esta última a las infracciones más graves, cuestión que fue también modificada radicalmente en el senado estableciendo la privación de libertad como una respuesta aplicable en cualquier circunstancia’ (R., 2017)

‘De máximo tres años de privación de libertad, terminamos con 10’ (E., 2017)

‘Hubo una nueva modificación de la ley 20084, producto de toda esta discusión. Y en esta se restringió, por ejemplo, la posibilidad de aplicar sustitución de condena antes de que hubiese pasado un cierto período de privación de libertad del adolescente.’ (B., 2017)

‘Yo salí con la sensación de que habíamos avanzado hartito fijate. O sea, el solo separar a los niños, especializar la atención, y instalar el enfoque de derechos a mi me pareció un gran paso.’ (P., 2017)

‘Era un gran avance, ¿no cierto? Un cambio te diría bastante radical ¿no? en que el sujeto se visualiza como un sujeto del cual hay que preocuparse’ (Q., 2017)

‘A mi me parece que esto es mucho mejor que lo que había digamos, lo que pasa es que igual se perdió una gran oportunidad, creo yo, para haber hecho algo mejor.’ (C., 2017)

‘La mejor ley de Latinoamérica’ (G., 2017)

‘En los informes que nosotros le presentamos al gobierno como al senado, por mayoría, nosotros dijimos que no estaban todavía las condiciones para partir el año 2007’ (J., 2017)

‘La infraestructura no estaba, la oferta programática no existía, la demanda yo creo que superó la capacidad de ejecución’ (R., 2017)

‘Tenía fortalezas y debilidades el proyecto, pero era un proyecto sobre el cual podía trabajar y el tema entonces se juega en la implementación, y la implementación era un desastre’ (F., 2017)

‘la norma que permitió que finalmente el ministerio público, la defensoría y el poder judicial decidieran como va a cumplir con el principio de especialización sin más exigencia legal que la capacitación, yo creo que eso fue un error.’ (M., 2017)



#### **Annex 4: Documents' quotes**

##### **Chapter 5: From no one's concern to a national problem: how Juvenile Justice and the need of a reform rose to the centre of national debate**

###### Historia de la ley 20,084

'Sabemos que son drogas que justamente hacen ser más expansivas a las personas y con mayores niveles de agresividad' (Deputy Guzmán, 2005:1035)

'Punitivo' (Deputy Bustos, 2004:233)

'Un fracaso' (Deputy Rossi, 2004:245)

'La señal que debe dar la sociedad es que en todo ámbito defenderá siempre los derechos de las personas y respetará la acción de los jueces.' (Deputy Uriarte, 2004:264)

'Me parece indispensable reforzar todo lo que diga relación con la familia [...] estamos cosechando la forma frívola con que se ha tratado la familia en Chile; la desconsideración y desvalorización del matrimonio y de la familia como los caminos de la perfección humana.' (Deputy Ibáñez, 2004:256)

'la actual legislación sobre menores contradice, en distintas materias, la normativa constitucional y los principios consagrados en la Convención de los Derechos del Niño [...] ha dado a lugar un sistema punitivo tutelar que no se somete a los controles constitucionales y vulnera permanentemente los derechos que la Carta Política consagra [...] procesos sin forma de juicio, la aplicación de medidas sin la participación de abogados, las sanciones privativas de libertad que vulneran el principio de legalidad.' (Deputy Bustos, 2004:233)

'Esta reforma estructural se fundamenta en que la actual legislación de menores en no pocas materias entra en contradicción con las disposiciones de la Constitución Política y de la Convención Internacional sobre los Derechos del Niño, y, en algunos casos, vulnera directamente dichos cuerpos, lo que nos pone, además -como lo hará presente el diputado señor Riveros-, en una situación muy compleja respecto del derecho internacional.' (Deputy Burgos, 2004:250)

'Sujeto de derechos y no objeto de derechos de otros.' (Deputy Bustos, 2004:233)

‘El proyecto de ley en tramitación, justamente, consagra que los niños son sujetos de derecho, que son personas y, por tanto, también tienen responsabilidades de acuerdo con su desarrollo y sus necesidades.’ Deputy Bustos, 2004:280)

‘Hoy no sólo los hacemos sujeto de derechos, sino también de deberes.’ (Deputy Soto, 2004:262)

‘Prácticamente todo adolescente es susceptible de ser rehabilitado; en cambio, resulta casi imposible lograrlo con el delincuente profesional adulto.’ (Senator Espina, 2004:498)

‘Destruyan sus vidas’ (Deputy Monckebers, 2004:268)

‘Un tipo de justicia especial, porque todavía no tienen consolidadas las características del adulto.’ (Deputy Saa, 2004:358)

‘La adecuación necesaria que debemos hacer como Estado respecto de nuestra actual regulación destinada a la infancia.’ (Minister of Justice Bates, 2004:239)

‘Es lógico bajar la edad de plena responsabilidad penal hasta los 14 años, siempre y cuando la legislación apunte a que estos niños, adolescentes, sean reinserados socialmente. Para eso, se requieren programas de educación, de capacitación laboral, contra la adicción a las drogas y al alcohol.’ (Deputy Guzmán, 2005:1035).

‘Es mucho mejor invertir los dineros de una política pública en responsabilidad penal del adolescente que en cualquier otro mecanismo de combate a la delincuencia.’ (Surrogate Minister of Justice Arellano, 2005:1041)

‘Estamos cambiando absolutamente la manera tradicional de ver a estos niños; estamos haciéndolos responsables de sus conductas.’ (Deputy Saa, 2004:359)

‘La legislación tutelar [...] altamente defectuosa, desprovista de todo concepto responsabilizador.’ (Ministry of Justice Bates, 2004:239)

‘Ineficacia para alcanzar los fines de prevención y sanción que se le exigen.’ (Ministry of Justice Bates, 2004:241)

‘Estos jóvenes están en condiciones de ser rehabilitados; el país necesita que lo sean y que se integren completamente a las actividades honestas y productivas de la sociedad.’ (Deputy Ibáñez, 2004:255)

‘Debemos hacernos cargo de su formación y rehabilitación.’ (Deputy Luksic, 2004:257)

‘Gente de bien’ (Deputy García, 2004:260)

‘En los últimos años ha habido un aumento inmenso de la delincuencia adolescente. Los jóvenes han entrado, precozmente, al mundo de la delincuencia.’ Deputy Ibáñez, 2004:255)

‘Todos sabemos que tanto el infractor como la víctima, en las condiciones actuales, no reciben de parte del sistema de justicia una respuesta adecuada.’ (Deputy Uriarte, 2004:356)

‘Hoy día estamos en el peor de los mundos. Los menores de 16 años que cometen delitos muy violentos, muy graves, no son imputables, no responden penalmente. Y, en el caso de los menores entre 16 y 18 años, la mayoría son declarados inimputables, por lo que tampoco asumen su responsabilidad penal.’ (Senator Novoa, 2004:509)

‘Cuando se habla de menores que no tienen discernimiento, hay que tener presente que hoy los niños de ocho o nueve años tienen una capacidad espectacular. Los niños están más despiertos.’ (Deputy García, 2004:259)

‘Impunidad imperante en el sistema, reforzada, en el caso de los menores de edad, sobre la base de la afirmación de su irresponsabilidad.’ (Deputy Uriarte, 2004:357)

‘Hoy en nuestra sociedad los jóvenes inician la carrera delictual a sabiendas de que, en la práctica, no les pasará nada.’ (Senator Espina, 2004:498)

‘Se asume que los adolescentes detentan responsabilidad, lo que puede habilitar la imposición de sanciones de carácter penal.’ (Minister of Justice Bates, 2004:240)

‘Es similar al procedimiento penal de los adultos vigente en Chile.’ (Senator Zaldívar, 2005:969)

‘El texto conocido y aprobado en general por la Comisión de Constitución y por la Cámara, fue concordado con miras a alcanzar mejores niveles de eficacia en la lucha contra el delito’ (Deputy Uriarte, 2004:356-357)

‘Debería indicarse expresamente que un elemento fundamental de este proyecto es la responsabilidad por las infracciones cometidas.’ (Deputy Forni, 2004:345)

#### Annual Speech President Frei to the Congress 21<sup>st</sup> May 1995

‘La globalización de la economía y de las comunicaciones está poniendo fin a nuestra mentalidad de isla y de finis terrae, influyendo sustantivamente en nuestros marcos de referencia y acción.’ (President Frei, 1995:31)

‘El país da cuenta de la contradicción de vivir en un ambiente de normalidad democrática, y experimentar a la vez una obstrucción proveniente de instituciones de origen autoritario y sin raíces en nuestra tradición republicana.’ (President Frei, 1995:33)

‘Tengo la certeza de que con este programa de reformas el sistema democrático ganará legitimidad, el Estado de Chile protegerá mejor el respeto cotidiano de los derechos humanos y nuestras instituciones judiciales ofrecerán la seguridad, la protección y la justicia que de ellas espera la ciudadanía’ (President Frei, 1995:13)

‘Concebimos la seguridad como un derecho colectivo y solidario.’ (President Frei, 1995:27)

‘La delincuencia, el terrorismo y el narcotráfico representan una amenaza para la convivencia nacional que el Gobierno ha enfrentado y continuará enfrentando con decisión, energía y responsabilidad.’ (President Frei, 1995:27)

‘En la esfera internacional, en un contexto de globalización económica, los derechos humanos son nuestra carta de presentación. Un país que respeta los derechos humanos y no tiene nada que ocultar puede relacionarse con todos los hombres, cualesquiera que sean su estirpe, clase o condición’ (President Frei, 1995:40)

‘Existe un amplio consenso en los sectores políticos y sociales. Hoy nadie objeta que el actual proceso penal es una institución que no se condice con un Estado moderno y democrático.’ (President Frei, 1995:13)

#### Annual Speech President Frei to the Congress 21<sup>st</sup> May 1998

‘Nuestra democracia evoluciona y por eso son más sólidas nuestras libertades’ (President Frei, 1998:1)

‘¡No tenemos miedo a la libertad!’ (President Frei, 1998:27)

‘Un país abierto al mundo, más libre y tolerante en su convivencia democrática’ (President Frei, 1998:35)

‘Nuestro propósito debería ser que, a comienzos del próximo siglo, a ningún chileno le falte cómo defender sus derechos’ (President Frei, 1998:6)

‘Valoro los progresos realizados por nuestras Fuerzas Armadas, su patriótica disposición y su carácter eminentemente profesional, jerarquizado y disciplinado. Aspiramos a su plena inserción en el sistema democrático, en condiciones de absoluta normalidad, en la mejor tradición de la República’ (President Frei, 1998:20)

‘Sabemos lo peligroso que esto puede ser. Cuando la gente no confía en la Justicia, poco vale la ley’ (President Frei, 1998:5)

‘Responsabilidad de las personas.’ (President Frei, 1998:18)

‘Si ayer fallamos, fue por la propia responsabilidad de cada uno. Si hoy progresamos, el mérito es también de cada cual [...] futuro que guarda la promesa de nuestra propia responsabilidad’ (President Frei, 1998:34)

‘Si no hemos podido avanzar, se ha debido a que sectores de la Oposición han sido renuentes al cambio [...] Si la Oposición insiste en cerrar las puertas, el país sabrá quiénes son los que no quieren avanzar en la consolidación democrática.’ (President Frei, 1998:31)

‘Somos una de las economías más abiertas del mundo. Por eso nos interesan vitalmente el libre comercio y los instrumentos que lo promueven entre las naciones.’ (President Frei, 1998:20)

‘Signo de la confianza depositada en el país es que el año pasado llegaron inversiones extranjeras ocho veces superiores a las que tuvimos en 1990.’ (President Frei, 1998:24)

‘Éste es nuestro valioso capital y no lo pondremos en riesgo bajo ninguna circunstancia.’ (President Frei, 1998:24)

‘El objetivo de la reforma es cambiar y modernizar nuestro proceso penal, el cual -tras casi un siglo sin haber experimentado renovación alguna- había perdido eficacia.’ (President Frei, 1998:6)

#### Annual Speech President Frei to the Congress 21st May 1999

‘La velocidad del avance en materias económicas y sociales contrasta con el retraso de nuestro funcionamiento político’ (President Frei, 1999:64)

‘Aquello que quizás más directamente sienten los chilenos: el aumento del desempleo’ (President Frei, 1999:6)

‘¡Que la fuerza pública proceda de inmediato a desalojar a quienes están realizando manifestaciones! ¡Ésta es una falta de respeto a la democracia! ¡Hay que buscar la unidad del país, no el enfrentamiento! ¡Den el ejemplo!’ (President of the Senate Zaldivar, 1999:1-2)

‘Esta crisis reafirma la importancia del papel regulador del Estado, el que debe contar con las herramientas y la autoridad necesarias para establecer claras normas de funcionamiento y lograr que ellas se cumplan cabalmente’ (President Frei, 1999:5-6)

‘Un sistema de justicia imparcial y eficiente’ (President Frei, 1999:28)

‘Hoy, los dirigentes de la Concertación tienen en sus manos una gran responsabilidad: dar respuesta a la mayoría de los chilenos que quieren más democracia, más libertad y más justicia.’ (President Frei, 1999:66)

‘Una de las más profundas transformaciones que experimentará el estado chileno desde su consolidación a mediados del siglo XIX’ (President Frei, 1999:28)

#### Annual Speech President Lagos to the Congress 21<sup>st</sup> May 2000

‘Disponemos del mayor número de computadores per cápita de América Latina.’ (President Lagos, 2000:5)

‘Los vecinos tendrán financiamiento para sus proyectos de recuperación de espacios públicos y para crear comités de vigilancia, pero deberán comprometerse a rechazar el desorden y la impunidad en sus vecindarios.’ (President Lagos, 2000:15)

#### Annual Speech President Lagos to the Congress 21<sup>st</sup> May 2001

‘La ampliación de las libertades de las personas debe ir acompañada de mayor seguridad para las familias y las comunidades. Es por eso que hemos hecho del combate a la delincuencia una prioridad nacional y una tarea de todos’ (President Lagos, 2001:4)

‘Está probado que cuando la gente confía en su policía, y la policía confía en la gente, los delincuentes se baten en retirada’ (President Lagos, 2001:4)

#### Annual Speech President Lagos to the Congress 21<sup>st</sup> May 2002

‘Comienzo de un siglo XXI marcado por la incertidumbre y el temor’ (President Lagos, 2002:3)

‘Cuando en este gobierno estén terminados esos 10 recintos penales, se habrá construido en materia carcelaria, el equivalente a todo lo que Chile ha construido en materia carcelaria en su historia.’ (President Lagos, 2002:9-10)

#### Annual Speech President Lagos to the Congress 21<sup>st</sup> May 2003

‘Desgraciadamente, hay quienes se empecinan día y noche, en predicar el negativismo. Nos muestran un país oscuro, pesimista; un país que no se condice con los esfuerzos que cada uno de nosotros y cada uno de nuestros compatriotas están y estamos realizando para salir adelante’ (President Lagos, 2003:3)

‘Hace diez años, sólo el 54 por ciento de los hogares contaba con refrigerador; hoy el 82 por ciento’ (President Lagos, 2003:4)

‘Esto se refiere también a la capacidad de un país que permite con reglas claras, fijas, estables, dar seguridad’ (President Lagos, 2003:7-8)

‘Chile debe hacer un gran esfuerzo por recuperar confianzas, confianzas que han sido melladas. Confianza en las instituciones públicas, confianza en el mundo de la empresa y de los negocios, confianza en el mundo de los sindicatos y los trabajadores, confianza de los chilenos entre si.’ (President Lagos, 2003:10)

‘El prestigio que Chile ha ganado en el mundo obliga a tomar responsabilidades.’ (President Lagos, 2003:5)

#### Government Plan candidate for presidency Lagos, 1999

‘La crisis económica multiplica la inseguridad de las familias y las hace sentir, con angustia, que una vez más el país le vuelve la espalda’ (Lagos, 1999:1)

‘Con las desigualdades sociales crecen las frustraciones, el desaliento, el desconsuelo. Crece también la delincuencia. Y se debilitan la solidaridad, el respeto, el coraje.’ (Lagos, 1999:2)

‘Los chilenos sabemos que cuando se debilita el Estado termina por imperar la ley del más fuerte. Sólo quedan en pie aquellos que poseen medios propios para defenderse y comprar su salud, comprar la educación de sus hijos, la vivienda, la previsión y hasta la seguridad para su familia. Los demás quedan condenados a salvarse como puedan con sus escasos recursos.’ (Lagos, 1999:2)

‘Sin discriminación.’ (Lagos, 1999:24)

‘Transparente, responsable, participativa y con sentido de autoridad.’ (Lagos, 1999:24)

‘Garantice la igualdad de oportunidades’ ‘el igual trato a todas las personas’ (Lagos, 1999:24)

‘Nos comprometemos a seguir impulsando las leyes y a ratificar los convenios internacionales que permitan fortalecer la vigencia de los derechos humanos. Continuaremos con la reforma al proceso penal’ (Lagos, 1999:25)

‘El gobierno de Ricardo Lagos asumirá a fondo la legítima inquietud de las familias por la magnitud y gravedad que presenta el fenómeno de la delincuencia [...] El gobierno de Ricardo Lagos tendrá entre sus tareas prioritarias la protección de la seguridad de la vida y de los bienes de las



personas mediante un enfrentamiento integral de la delincuencia.’ (Lagos, 1999:19)

‘Protegeremos los derechos de los niños, niñas y jóvenes, adecuando nuestra legislación a la Convención Internacional de los Derechos del niño.’ (Lagos, 1999:13)

#### Government Plan candidate for presidency Lavín 1999

‘Los problemas de la justicia se traducen primero en una sensación y después en una actitud anti-sistema. Una actitud que prefiere la autotutela o la solución por la mano propia antes que recurrir al sistema, pues no se ve la utilidad real de hacer esto último’ (Lavín, 1999:30).

‘¡Chile necesita un cambio! Necesita una justicia rápida, eficiente y que funcione para todos. Hay que perfeccionar el sistema para modernizarlo y aumentar su cobertura llegando a toda la gente.’ (Lavín, 1999:30)

‘La fiesta de los delincuentes.’ (Lavín, 1999:3)

‘Señales claras y firmes contra la delincuencia.’ (Lavín, 1999:4)

‘Chile desea ser respetado por el mundo.’ (Lavín, 1999:34)

‘La clave está en entender que mantener buenas relaciones internacionales y ser un país respetado por el mundo es algo favorable para todos, porque permite acceder a nuevas oportunidades de mejorar las condiciones de vida.’ (Lavín, 1999:35)

‘La seguridad jurídica es una condición fundamental para el desarrollo económico del país.’ (Lavín, 1999:31)

#### Government Plan candidate for presidency Bachelet 2005

‘En Chile y en todos los países que se globalizan se multiplican las oportunidades, pero al mismo tiempo aumentan los riesgos para la gente. Así, surge con fuerza la demanda por un país más acogedor, capaz de reducir los riesgos y la inseguridad económica que afectan a amplios sectores de la población’ (Bachelet, 2005:9-10)

‘El miedo y la inseguridad no pertenecen al Chile que estamos construyendo.’ (Bachelet, 2005:64)

‘Queremos que los policías estén en la calle y no en la comisaría. Aspiramos a que el carabinero vuelva a ser parte de la comunidad, de la vida de barrio, y que sea conocido y respetado por los vecinos.’ (Bachelet, 2005:66)

‘La Reforma Procesal Penal ha sido un gran paso en transparentar y agilizar los procesos penales.’ (Bachelet, 2005:81)



‘La Reforma Procesal Penal fortaleció el Estado de Derecho y sentó las bases de la justicia.’ (Bachelet, 2005:64)

‘La dictadura en su alianza con el neoliberalismo dedicó grandes esfuerzos a reducir el tamaño del Estado, despreciando las funciones públicas, descalificando a los funcionarios. Una de las tareas fundamentales que los gobiernos de la Concertación han asumido en la rectificación del modelo económico ha sido reivindicar el rol del Estado.’ (Bachelet, 2005:76)

‘Trabajaremos activamente para proteger a la ciudadanía y atacar las causas profundas de la violencia y la delincuencia. La seguridad ciudadana es parte imprescindible del sistema de protección social que vamos a construir’ (Bachelet, 2005:64)

‘Desde que recuperamos la democracia en 1990, los chilenos iniciamos un exitoso proceso de reinserción internacional.’ (Bachelet, 2005:97)

‘La aplicación de la Reforma Procesal Penal ha generado la necesidad de ampliar la estructura y principios del nuevo sistema a la justicia penal de adolescentes.’ (Bachelet, 2005:82)

## **Chapter 6: A new Juvenile Justice System**

‘Apunta al fondo de un tema que preocupa a los chilenos, en particular en estos últimos meses, a propósito de diversas declaraciones públicas de candidatos a la presidencia de la República: el de la seguridad ciudadana.’ (Deputy Burgos, 2005:1095)

‘Un problema que en el último tiempo se ha manifestado en forma extremadamente dura y que preocupa sobremanera a nuestra sociedad.’ (Senator Novoa, 2004:507)

‘Existe una discusión política, porque algunos afirman que la Concertación sólo quiere hacer cariño al delincuente. Más allá de esas pequeñeces de quienes quieren sacar provecho electoral del tema...’ (Deputy Hales, 2005:1037)

‘Mientras más se acercan las elecciones, se produce una verdadera competencia por presentar y acoger iniciativas que tengan que ver con la seguridad ciudadana.’ (Deputy Burgos, 2004:348)

‘Me duele que la delincuencia juvenil se pondere no como un problema de los niños, sino como objeto de debate político, como si con esto ganara el Gobierno o ganara la Oposición.’ (Senator Ruiz-Esquide, 2004:513)

‘Cabe señalar que la Comisión deja constancia de que, para agilizar la tramitación de esta iniciativa, resolvió darle su aprobación en general, postergando para una fase posterior el análisis pormenorizado de sus normas.’ (Secretary Hoffmann, 2004:496)

‘Ayer, se pudo ver en un programa de televisión el caso de un menor de 14 años, que ha sido detenido 23 veces por diversos delitos, y que aún así sigue en libertad.’ (Deputy Uriarte, 2005:1098)

‘Son el mayor peligro que atenta contra la seguridad de las personas.’ (Deputy Saa, 2004:253)

‘La sociedad nos presiona para que dictemos prontamente esta ley.’ (Deputy Soto, 2004:363)

‘La gente pide castigo para los delincuentes; la iniciativa propone sanciones a los adolescentes que cometen ilícitos.’ (Deputy Hales, 2005:1038)

‘Tenemos claro que al momento de aplicar la ley se detectarán vacíos y errores que requerirán corrección. Una ley de esta naturaleza requiere adecuaciones por lo que deberá volver al Congreso Nacional. Por eso, me quedo tranquila.’ (Deputy Guzmán, 2005:1101)

‘Después de un largo debate, la Comisión, por 4 votos contra 0 -porque no había otra solución-, aceptó que la pena máxima para un adolescente mayor de 16 años y menor de 18 sea de 10 años de privación de libertad.’ (Senator Viera-Gallo, 2005:963-964)

‘Entre los años 1995 y 2002 los delitos cometidos por menores de 18 años han aumentado dramáticamente: 700 por ciento en robo con violencia y 400 por ciento en hurto. También ha aumentado la tasa de delincuencia juvenil en mujeres. Y para qué decir en jóvenes de la enseñanza media.’ (Deputy Monckeberg, 2004:268)

‘Se ha sostenido que la iniciativa eleva las penas establecidas por la Cámara de Diputados y que es de carácter represivo. [...] pido a los señores Senadores que, por favor, presten atención, para demostrarles que el proyecto es absolutamente protector de los menores [...] el menor queda sometido a toda la red de protección del Estado en materia de educación, de reinserción social y de prevención de consumo de drogas y alcohol. Nunca ha existido en Chile un nivel tan alto de amparo para los menores como el dispuesto en este proyecto.’ (Senator Espina, 2005:964-965)

‘La experiencia internacional es tan dramática que en el Parlamento inglés se discutió la posibilidad de rebajar la imputabilidad penal de 12 años a 10 años. Incluso, algunos miembros de la Cámara propusieron dejarlo en 8

años. Eso significa que el fenómeno delictual en Inglaterra a nivel juvenil es tan grande que no ha dado resultado fijar la imputabilidad juvenil a los 12 años.’ (Deputy Leal, 2004:283)

‘El Gobierno, a través del Ministerio de Justicia y del Sename, ha hecho un tremendo esfuerzo por reformar un sistema obsoleto y que, sin duda, nos ayudará a avanzar en un estado de derecho que sea más consolidado, más democrático y que entregue más espacios a todos los sectores.’ (Deputy Araya, 2004:277)

‘Esta iniciativa será más garantista respecto del joven delincuente, quien dispondrá tanto de un abogado que lo defienda como de un debido proceso.’ (Senator Viera-Gallo, 2004:502)

‘En esta iniciativa hay una política pública de futuro, en el sentido de que, como sociedad, vamos a expresar concretamente que no nos hacemos más los lesos con lo que pasa con los jóvenes delincuentes o infractores.’ (Deputy Burgos, 2005:1034)

‘Con la aprobación de este proyecto reduciremos la comisión de delitos graves en que participen menores de edad. Pero más importante que eso, estaremos ayudando a formar conciencias, a descubrir nuevos hombres, en definitiva, a rescatar para nuestro Chile hombres y mujeres que contribuyan con sus potencialidades al desarrollo y crecimiento de todos y cada uno de sus hijos.’ (Deputy Meza, 2004:262)

‘Esta iniciativa constituye un avance, en términos de situarnos un poco a la altura de lo que ocurre a nivel mundial en esta materia.’ (Deputy Luksic, 2004:258)

‘El texto conocido y aprobado en general por la Comisión de Constitución y por la Cámara, fue concordado con miras a alcanzar mejores niveles de eficacia en la lucha contra el delito’ (Deputy Uriarte, 2004:356-357)

‘Este proyecto es un gran paso en la lucha por tener más seguridad ciudadana. Es en este tipo de discusiones donde se determina el futuro de la seguridad ciudadana del país.’ (Deputy Burgos, 2005:1096)

‘La segunda razón para aprobar este proyecto es que separa definitivamente el proceso de protección a menores en riesgo social del sistema de reclusión y rehabilitación de menores infractores a la ley’ (Deputy Uriarte, 2005:1098)

‘Es preciso que exista nitidez en cuanto al término de la impunidad.’ Senator Coloma, 2005:972)

‘Estamos por hacer al joven responsable por sus delitos y, al mismo tiempo, por establecer un mecanismo que diferencie la responsabilidad del

adolescente de la de los adultos; que permita trabajar en su inserción social y en la interrupción temprana de las carreras delictuales.’ (Surrogate Minister of Justice Arellano, 2005:1041-1042)

#### Historia de la ley 20,191

‘En primer término, se trata de una ley que debió entrar en vigencia hace un año. En su oportunidad, el Ministro de Justicia, señor Bates, aseguró que toda la nueva institucionalidad sobre responsabilidad penal juvenil iba a estar en funcionamiento. Cuando asumió como titular de esa Cartera el señor Solís, durante el Gobierno de doña Michelle Bachelet, nos confesó que nada de lo prometido se había cumplido [...] ¡Se trata de delitos gravísimos! Y no veo qué explicación se va a dar al país cuando se le informe que el autor del delito de violación con homicidio, por ejemplo, no estará un día detenido. ¡Ni un día! [...] ¡no me haré cómplice de eso!’ (Senator Espina, 2007:29-31)

‘El tema es que en la Concertación se está estimando cada vez más legítimo el uso y abuso de todos los recursos del Estado, como si fueran de propiedad de la coalición gobernante, con el objetivo de perpetuarse en el poder. Esto que empezó a tomar cuerpo durante el gobierno de Ricardo Lagos, incluye el abuso comunicacional, la demagogia comunicacional [...] Nada de eso se cumplió. Por eso el gobierno de don Ricardo Lagos se ha terminado pareciendo a los decorados de Hollywood, en que lo único real son las fachadas de las locaciones y detrás de ellas no hay nada.’ (Deputy Cardemil, 2007:71)

‘Quiero recordar que la entrada en vigencia de este cuerpo legal, la ley 20.084, fue uno de los temas de la campaña presidencial de la candidata Bachelet . El año 2005 se le prometió a la ciudadanía que, atendido el lamentable ingreso de tantos jóvenes al mundo de la delincuencia, se iban tomar medidas, que se les iba a sancionar, pero que también se les iba a dar la posibilidad de rehabilitarse [...] Nadie podría discutir las bondades de la ley. Se aprobó, y la elección presidencial fue ganada por la candidata que promovía su entrada en vigencia. Entonces, le correspondía al Gobierno hacer su pega.’ (Deputy Turres, 2007:68)

#### Annual Speech President Lagos to the Congress 21<sup>st</sup> May 2000

‘Algunas entidades privadas, como la fundación Paz Ciudadana, han hecho grandes contribuciones.’ (President Lagos, 2000:15)

#### Government Plan candidate to presidency Lavín, 1999

‘La gente pierde la confianza porque sabe que de cada 100 causas criminales por delitos como robo y violación, sólo 4 terminan en condena.’ (Lavín, 1999:30)

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